TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1933

No. 49

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

SAMUEL M. SHANNON, FAITH A. SHANNON AND
W. H. SHANNON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 8, 1933.
CERTIORARI GRANTED OCTOBER 9, 1933.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 47

UNITED STATES OF AMERICA, PETITIONER

VERSUS

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON, RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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APPENDIX TO BRIEF OF APPELLANT

APPENDIX

No. 6128

PORTION OF AMENDED ORDER REFUSING TO QUASH AND ALLOWING AMENDED COMPLAINT TO BE FILED

Filed in Civil Action No. 1914, November 6, 1948

* * * * * * *

The *fourth* ground upon which the United States asked that the plaintiffs' complaint should be dismissed and the return of service quashed was that the suit was brought in violation of the Assignment of Claims Act, 31 U.S.C., section 203. It appears from a review of the cases interpreting this Act that the purpose of Congress in passing it was to prevent the United States from being put in a position of having to decide to which of two claimants it would pay money under a contested claim; and then to stand liable for a like sum to the rejected claimant should a court decree that such claimant was the party to whom the money should have been paid. *Martin* v. *National Surety Co.*, 57 S. Ct. 531, 300 U.S. 588, 81 L. Ed. 822 The courts all decree that as between the claimants themselves such an assignment is valid. *Bank of California, National Ass'n* v. *Commissioner of Internal Revenue*, 133 F. 2d 428; *In re: Webber Motor Co.*, 52 F. Supp. 742, 55 Am. Bankr. Rep. N.S. 340. In this case, however, all of the possible claimants against the United States in this cause of action now stand before the judicial forum. The United States will not have to choose which claimant will be paid. This court will do so and all of the claimants will be bound by the decree and those who are unsuccessful will have had their day in court and will not be heard to return at some later date and set up
3 an unjust claim against the United States for money to which they are not entitled. The rights of all of the possible claimants and of the United States will be finally adjudicated in this one suit and that will be an end to the matter. Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., have all answered in this suit and have all admitted the sale of the property and the lease in question to the plaintiffs. They also admit the sale of any cause of action that they may have against the United States to the plaintiffs and they state that they are willing for the plaintiffs to receive any money due them from the United States in this cause

of action. These parties, Kathleen P. Boshamer, et al., are not merely passive parties in interest in this suit. They have been brought into this court as active parties-plaintiff by the other plaintiffs. Any judgment against the United States that may be rendered in their favor will not be decreed in favor of Samuel Shannon, Patti Shannon and W. L. Shannon, by virtue of an assignment to the Shannons, of a claim, by Kathleen Boshamer, et al. and then by virtue of the answer of Kathleen Boshamer, et al. The judgment will be declared against the United States specifically in favor of Kathleen Boshamer, et al. and the admitted sale of their claim to the Shannons any proceeds arising therefrom will be awarded the Shannons. This court cannot see how the United States can be prejudiced by such a proceeding and therefore the fourth ground is overruled.

* * * * * * *

4 AMENDED COMPLAINT

Filed in Civil Action No. 1914, December 1, 1948

The plaintiffs above named [Samuel M. Shannon, Patti A. Shannon and W. L. Shannon], complaining of defendants above named [United States of America, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, N. D. Porter, Jr.], allege:

(1) That the United States of America is a sovereign government of which the plaintiffs are citizens but which has made itself subject to suits brought in this Honorable Court through its laws, statutes, congressional enactments and Constitution.

(2) That the plaintiffs bring this cause of action pursuant to what is commonly known as the Tucker Act or Title 28, Section 21 (sic, properly 41) (20), U.S.C.A. which provides that the plaintiffs may sue the United States Government in the District Court of the United States in a suit of this kind.

(3) That on January 1, 1943 the United States of America leased from Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., a piece of property in Richland County, South Carolina, described as follows:

> All that piece, parcel or tract of land known as the Rawl Place, containing two hundred thirty two and a quarter (232¼) acres, more or less, situate, lying and being on Jackson Creek in the County of Richland, State of South Carolina, and bounded as follows: to wit: toward the North on lands of

Ross and lands of Hallmand; toward the East on lands of Hallmand and the run of Jackson Creek; toward the Southwest on Poplar Branch and the lands of Aughtry and
5 lands of Ross, being the tract of land heretofore conveyed to John T. Thorton, Agent for Lina B. Thorton, by Roxie E. Davis, and having shape, boundaries, courses, and distances as are represented upon a plat of S. Reed Stoney, C. E., dated 3-28-93, recorded in Office of the Clerk of Court of Richland County, Plat Book 'A', page 85, said tract being more particularly described as beginning in the Run of Jackson Creek at a point where the Southwest boundary line of the Hallmand tract, being the Northeast boundary line of the herein described land, intersects the run of Jackson creek, thence along the Hallmand line H. 50°W a distance of 5600' to a stake, thence in a Southwesterly direction along the joint property line of the land herein described and the Ross tract to a corner 3 x 0, thence in a Southerly direction to a point in the run of Poplar Creek; said point being identified as a "Pine Saplin 3 X O", thence down Popular Creek in a Southerly direction with the meandering of the Branch to Jackson Creek, then a Northeasterly direction up the meandering of Jackson Creek to the point of beginning. Excepting 2 tenant houses and the immediate one acre surrounding each.

(4) That the plaintiffs are informed and believe that according to the terms of this lease and the statutes of the United States, the United States agreed to return the property leased to the lessors in as good condition as it was in when it was first leased to the United States and when possession was taken by the United States or to pay to the lessors a sufficient sum of money to compensate them for any damages done to the property.

(5) That according to the terms of the said lease the United States of America was to pay to the lessors two hundred fifty ($250.00) dollars per year for the lease of the property.

6 (6) That on April 30, 1946, by a contract of sale, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, N. D. Porter, Jr., sold to Samuel M. Shannon and W. L. Shannon the same property that they had leased to the United States of America and also certain other property that they owned in the same vicinity and by the same instrument they granted to Samuel M. Shannon and W. L. Shannon any right that they had to a cause of action or to damages from the United States of America for any injuries that the agents of the United States of America may have done to the land leased to it.

(7) That subsequently Samuel M. Shannon assigned to Patti

A. Shannon all of his rights under the contract of sale from Kathleen P. Boshamer and the other above named defendants.

(8) That by deed executed on June 3, 1946, and recorded in the Clerk of Court's Office for Richland County, South Carolina, in deed book "GM" at page 432, Kathleen P. Boshamer and the other defendants, excepting the United States of America, conveyed to W. L. Shannon and Patti A. Shannon all of their right, title and interest in and to the above mentioned land that was leased to the United States of America and other land in the same vicinity.

(9) That on April 22, 1947, the United States of America returned the leased property to its owners.

(10) That during the time that the United States of America had possession of the leased property its agents misused and abused that property and destroyed the timber thereon and did damage to the realty and cause the property to deteriorate in value and these agents were then and there about the business
7 of the United States of Americea and were acting within the scope of their authority.

(11) That the plaintiffs are entitled to rent for the property in question for the period of time from the purchase of the property by the plaintiffs to the surrender of the property by the United States of America which the United States of America has never paid and has failed and refuses to pay after demand therefor.

(12) That Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., have sold to the plaintiffs any cause of action that they have against the United States of America for injury to the property leased by them to the United States of America and later sold to Patti A. Shannon and W. L. Shannon.

(13) That the plaintiffs are informed and believe that these causes of action must be prosecuted by Kathleen P. Boshamer and the others above named in their own names and they have refused to help the plaintiffs in any way to recover the causes of action that they sold to the plaintiffs for a valuable consideration.

(14) That Kathleen P. Boshamer and the others above named are liable to the plaintiffs for any sums that they may recover against the United States of America for the damage done by the United States of America to the property leased to it by Kathleen P. Boshamer and the others above named—for a period of time while title to the property was in Kathleen P. Boshamer and the others above named.

(15) That Kathleen P. Boshamer and the others above named are necessary parties plaintiff in this suit and are joined as unwilling plaintiffs.

8 (16) That the plaintiffs are informed and believe that although the agents of the United States of America damaged the property in question contrary to the terms of their lease of the property and in breach of the terms of that lease, the United States of America now refuses to remunerate Kathleen P. Boshamer and the others like situated or the plaintiffs for this damage that its agents did and the United States of America refuses to pay rent to the plaintiffs or to Kathleen P. Boshamer and the others similarly situated for the rent due and owing by the United States of America from June 1946 to April 22, 1947.

(17) That these acts on the part of the United States of America are in breach of its lease contract with Kathleen P. Boshamer and others like situated and with the plaintiffs—who became entitled to the rights of Kathleen P. Boshamer and the others like situated under the lease with the United States of America upon their purchase of the property—and are contract to the statutes of the United States of America and the United States of America is thereby depriving the plaintiffs and Kathleen P. Boshamer and others like situated of their property without due process of law, contrary to the fifth (5th) Amendment of the Constitution of the United States.

(18) That by the acts of the United States of America the plaintiffs have been damaged in the sum of four thousand ($4,000) dollars all of which belongs to Patti A. Shannon and W. L. Shannon.

Wherefore, the plaintiffs demand judgment against the United States of America in the sum of four thousand ($4,000) dollars and the plaintiffs, Patti A. Shannon and W. L. Shannon, demand judgment for the damage done to the property while they owned it and while the other defendants, Kathleen P. Boshamer
9 Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, N. D. Porter, Jr., owned it.

/s/ C. T. GRAYDON
/s/ JOHN GRIMBALL

COLUMBIA, S. C.

NOVEMBER 12, 1948

ANSWER OF KATHLEEN P. BOSHAMER, et al.

Filed in Civil Action No. 1914, January 27, 1949

The defendants, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr.,

answering the Amended Complaint dated November 12, 1948, would respectfully show:

1. That they admit the allegations of Paragraphs One, Two, Three, Four, Five, Six, Seven, Eight and Nine in the Amended Complaint contained.

2. That they are without information as to the allegations of Paragraph Ten of the said Amended Complaint, and, therefore, neither admit nor deny the allegations therein contained.

3. That the defendants admit the allegations of Paragraphs Eleven, Twelve, Thirteen and Fourteen in the Amended Complaint contained.

4. Answering the allegations of Paragraph Fifteen, these defendants would show that they were absentee landowners of the property described in the Amended Complaint, and while they have no doubt that the property was abused and damaged, they are without knowledge of the true facts, and for this reason they declined to act as parties plaintiff in this suit.

5. Answering the allegations of Paragraphs Sixteen, Seventeen and Eighteen of the said Amended Complaint, these defendants would respectfully show that they are without personal knowledge or information of the allegations contained in these Paragraphs, and hence neither affirm nor deny the same, but admit that if such damage has been done, or can be established, for which the United States of America is liable to any party, that these defendants have and make no claim to any such damage, having sold, assigned, and transferred the said property and any assignable claim for damages to the plaintiffs.

Wherefore, these defendants having fully answered do pray that any judgment for damages established against the United States of America by the plaintiffs, Patti A. Shannon and W. L. Shannon, arising out of the lease and occupancy of the said property by the United States of America, be limited to the United States of America, and that these defendants be in no. wise adjudged liable or responsible for any damages or cause for damages of the said action.

/s/ W. G. Finley
W. G. FINLEY,
Attorney for Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr.,
Defendants.

York, South Carolina

January 14, 1949

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me Kathleen P. Boshamer, who being duly sworn, deposes and says that she is one of the defendants in the foregoing action; that she has read the foregoing Answer, and all matters alleged therein are true of her own knowledge, except those matters and things stated to be upon information and belief, and as to these she believes them to be true.

/s/ *Kathleen P. Boshamer.*

SWORN to and subscribed before me this
14th day of January, 1949.
/s/ *Gay Alexander White* (SEAL)
Notary Public for South Carolina.

ANSWER OF THE DEFENDANT, UNITED STATES OF AMERICA

Filed in Civil Action No. 1914, March 18, 1949

The Defendant, The United States of America, answering the Amended Complaint of the Plaintiffs herein, would show as follows:

1. Admits allegations of paragraphs one, two, three, five, eight, nine and eleven.

2. Denies each and every other allegation in the complaint contained not herein admitted, controverted or specifically denied.

Wherefore defendant having fully answered prays that the complaint of the plaintiffs be dismissed with costs.

BEN SCOTT WHALEY
United States Attorney
By (sgd.) Russell D. Miller
Russell D. Miller
Asst. U. S. Attorney

AMENDED ANSWER OF THE DEFENDANT,
UNITED STATES OF AMERICA

Filed in Civil Action No. 1914, May 11, 1949

12 The Defendant, the United States of America, answering the Amended Complaint of the Plaintiffs herein, would show as follows:

FOR A FIRST DEFENSE

1. Admits allegations of paragraphs one, two, three, five, eight, nine and eleven.

2. Denies each and every other allegation in the complaint contained not herein admitted, controverted or specifically denied.

FOR A SECOND DEFENSE

Further answering, this Defendant says that one B. L. Kelly leased the property involved in this action from the original owner, Mrs. N. D. Porter, on December 29, 1939, sub-leased the same to Defendant on March 20, 1942, and that the said B. L. Kelly executed a release to Defendant on December 30, 1943; that by supplemental agreement dated June 20, 1946, and a formal release executed on May 1, 1947, by Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., the Defendant was released and discharged from all liability because of its use and occupancy of the lands, except for any unpaid rent due; and this Defendant says that by virtue of the execution of the supplemental agreement and releases before referred to, it has been fully released and discharged from any and all claims for damages or waste to the lands involved in this suit.

Wherefore Defendant having fully answered prays that the complaint of the Plaintiffs be dismissed with costs.

BEN SCOTT WHALEY
United States Attorney
By (sgd.) Russell D. Miller
RUSSELL D. MILLER
Asst. U. S. Attorney

13 REPLY TO AMENDED ANSWER

Filed in Civil Action No. 1914, May 30, 1949

The plaintiffs above named, replying to the amended answer of the defendant United States of America filed May 11, 1949, say:

1. That the supplemental agreement referred to in the second defense of the United States of America, dated June 20, 1946, and the formal release executed on May 1, 1947, by Kathleen P. Boshamer, Eva P. Summers, Amie P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., discharging the United States of America from all liability because of its use and occupation of the lands in question were obtained from the signers of these two instruments through fraudulent, overreaching, inequitable, unfair and unconscionable acts on the part of the agents of the United States of America and do not constitute a defense to the plaintiffs' cause of action and should be set aside by this Court and declared void and of no effect.

2. That at the time that the agents of the United States of America obtained these signed agreements from Kathleen P. Boshamer, Eva P. Summers, Amie P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., said agents were in direct negotiation with the plaintiffs and knew that the plaintiffs had purchased the rights of Kathleen P. Boshamer and the other signers of these instruments in the land in question, and the agents of the United States of America were dealing with the plaintiffs and with all of the other defendants to get these claims settled, and these agents acquired these release agreements from Kathleen P. Boshamer, Eva P. Summers, Amie P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., without paying them any consideration therefor,
14 and in direct violation of the rights of the plaintiffs above-named when the agents of the United States Government had acquired the ability to procure these release agreements by their confidential dealings and relationship with the plaintiffs and the other defendants.

Wherefore, plaintiffs respectfully request that these agreements be declared void and of no effect in this suit and be set aside.

/s/ John Grimball
JOHN GRIMBALL
Attorney for Plaintiffs

Columbia, S. C.

May 27, 1949

Findings of Fact and Conclusions of Law

Filed in Civil Action No. 1914, January 16, 1950

This is an action to recover damages to land from the United States.

In compliance with Rule 52 (a) of the Rules of Civil Procedure, I find the facts specially and state my conclusions of law thereon, in the above cause, as follows:

Findings of fact

1. A certain tract of land was leased to the United States on January 1, 1943, by the joint owners Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., hereinafter referred to as Kathleen P. Boshamer, et al.; the said lease was renewable from year to year and was subject to cancellation by the lessee upon the giving of thirty days written notice to the lessors of its intention so to do. The yearly rental to

be paid under the lease was Two Hundred, Fifty Dollars ($250.00), and said lease was renewed from time to time until it was terminated by the lessee effective April 22, 1947.

15 2. That, thereafter on April 30, 1946, by contract of sale, the joint owners and lessors to the Government, Kathleen P. Boshamer, et al., defendants in this action, agreed to sell the said property and other property in the same general vicinity to Samuel M. Shannon and W. L. Shannon for a valuable consideration, and in said contract of sale assigned and transferred any claim, cause of action or right to recover damages which said grantors might have had against the United States growing out of damages or injuries to the property by the lessee during the time it was in possession under said lease; that subsequently thereto, but before June 3, 1946, Samuel M. Shannon assigned to Patti A. Shannon all of his right, title and interest under the contract of sale with the grantors therein, Kathleen P. Boshamer, et al,; that on June 3, 1946, the grantors hereinabove named by deed conveyed said land to Patti A. Shannon and W. L. Shannon.

3. That damages were done to said property by the United States, its agents, servants and employees in the amount of Two Thousand, Fifty Dollars ($2,050.00).

4. That the United States terminated the lease covering the lands in question effective as of April 22, 1947, and that it has not paid any rental under said lease to anyone from June 30, 1946, to April 22, 1947, and the United States is indebted to plaintiffs Patti A. Shannon and W. L. Shannon for rent for said period at the rate of Two Hundred, Fifty Dollars ($250.00) per year.

Conclusions of Law

This Court has jurisdiction of the parties and of the subject matter of this action.

The damages to the land herein described were committed by the agents or servants of the United States while acting within the
16 scope of their authority, and those acts were the direct and proximate cause of the injuries and damages incurred by the plaintiffs Patti A. Shannon and W. L. Shannon, and the United States is liable for such damages to said land.

Under the South Carolina law plaintiffs Patti A. Shannon and W. L. Shannon are entitled to judgment in the sum of Two Thousand, Fifty ($2,050.00) Dollars, and for rent in the sum of Two Hundred, Two and 74/100 ($202.74) Dollars.

The assignment of the claim by Kathleen P. Boshamer, et al. to Samuel M. Shannon and W. L. Shannon, and the assignment by

Samuel M. Shannon to Patti A. Shannon, are valid and enforceable assignments.

(Signed) C. C. WYCHE,
United States District Judge.

Dated: Spartanburg, S. C., January 14, 1950.

JUDGMENT

Filed in Civil Action No. 1914, January 21, 1950

THIS ACTION having been brought to trial at a District Court held on the 17th day of October, A. D. 1949, and an Order for Judgment for the Plaintiffs having been rendered therein by the Court on January 19, 1950—for the sum of Two Thousand, Two Hundred Fifty-two & 74/100 ($2,252.74) Dollars, and the costs having been adjudged at Thirty-four and 15/100 ($34.15) Dollars;

Now, on motion of John Grimball, Esq. Attorney for said Plaintiffs IT IS ADJUDGED that Plaintiffs, W. L. Shannon and Patti A. Shannon recover of said United States of America, Two Thousand, Two Hundred Fifty-two and 74/100 ($2,252.74) Dollars, so
17 found with Thirty-four and 15/100 ($34.15) Dollars, costs.

(s) ERNEST L. ALLEN,
C., D. C. U. S., E. Dist. S. C.
(Seal)

JOHN GRIMBALL, Esq.,
Plaintiff's Attorneys.

NOTICE OF APPEAL

Filed in Civil Action No. 1914, March 11, 1950

TO MESSRS. C. T. GRAYDON, JOHN GRIMBALL, ATTORNEYS FOR PLAINTIFF:

Notice is hereby given that the defendant, above named, hereby appeals to the Circuit Court of Appeals for the Fourth Judicial Circuit, from the order of Honorable C. C. Wyche, United States District Judge, enter (sic) in this action on January 14, 1950.

(s) BEN SCOTT WHALEY,
(s) RUSSELL D. MILLER,
Attorneys for Defendant.

March 10, 1950.

TESTIMONY OF WITNESS SAMUEL L. SHANNON

Lines 10 through 21 on page 21 and from line 22 on page 29 through line 12 on page 32 of the typewritten transcript of testimony, filed in Civil Actions Nos. 1914 and 1915, June 6, 1950:

Q. So, then, all the damages that you have testified about here done to this property was done before you bought it?

A. Yes, sir, practically all of it.

Q. And, as a matter of fact, the soldiers left out there about 1944 or '45, didn't they?

A. No, sir.

18 Q. When did they leave?

A. After the war was ended.

Q. After the war was ended?

A. That's right.

Q. And, after the war was ended, they quit maneuvering?

A. That's right.

* * * * * *

Q. At the time you acquired the place, you knew all of these damages had been done?

A. Sure.

Q. You knew that Mr. Kelly had farmed these lands and that he had leased them to the Government and these other parties who owned it prior to the time they leased it to the Government.

A. No, sir. That's not my understanding.

Q. That's not your understanding. But, you knew that the party from whom you purchased it, Boshamer, that they had leased it to the Government?

A. Yes, sir. I knew the Government had it leased.

Q. And didn't you also know at the time you bought the property that these people had executed a release to the Government saying that they were satisfied with what they paid them for the premises?

A. No, sir. I didn't know anything about that.

Q. Didn't you sign a release at the bottom of one that had been signed by these people who sold it to you?

A. No, sir.

Q. Reserving certain rights with reference to the unrented lands?

Mr. GRIMBALL: May it please The Court, if the Government has got the release, I submit that they should show it to the witness.

19 Mr. MILLER: Certainly, sir. Under the agreement it is in evidence, and also from the pre-trial conference.

The COURT: All right.

Q. (By Mr. Miller) Well, now, the point I'm making is this, sir: When you acquired title to the property, they were not selling you any interest or any claim that they had against the Government, were they? You didn't understand that you were buying from the Boshamers any claim that they had against the Federal Government, did you?

Mr. GRIMBALL: Now, may it please the Court, the Contract of Sale is in evidence, and it specifically states the facts. I think it speaks for itself. And, I don't think that the witness could change that one way or the other.

Mr. MILLER: If your Honor pleases, I don't think he could change the terms of a written instrument, of course. The point I was making was he testified as to certain values of the property, and I want to find out in arriving at his values if he took into consideration a claim that these people had against the Government.

The COURT: I think that would be competent.

Q. (By Mr. Miller) When you were dealing with the Porters, did you understand that you were buying a claim against the Government?

A. Yes, sir. And it is signed in my contract there with them. that this was signed to me and my sons. That's who was buying it; me and my sons.

Q. So, then, any claim that they had against the Government was assigned to you?

A. That's right.

Q. That is your understanding?

A. That's what the contract calls for there.

Q. Now, I believe, Mr. Shannon, that the Government leased the two hundred and thirty acre tract, but did not lease the two and-a-half acre tract on which these buildings were situated, is that right?

A. I couldn't tell you, sir. I've never been able to see the lease. I don't know what kind of lease the Porters had with the Government.

Q. You don't know about that, sir?

A. No, sir, I don't.

SUPPLEMENTAL AGREEMENT No. 2

(Defendant's Exhibit G to the transcript of testimony)

Filed in Civil Actions Nos. 1914 and 1915, June 6, 1950

THIS SUPPLEMENTAL AGREEMENT executed this 20 day of June 1946, by and between Mrs. Kathleen P. Boshamer, Mrs. Eva P. Summers, Mrs. Amy P. Lybrand, Mrs. Julia I. Porter, Miss Joan

Porter and N. D. Porter, Jr., whose address is c/o Mrs. C. C. Boshamer, New Hope Road, Gastonia, North Carolina, for themselves, their heirs, administrators, executors and assigns, hereinafter referred to as First Party, Patti A. Shannon and W. L. Shannon, whose address is R.F.D. #3, Columbia, South Carolina, for themselves, their heirs, administrators, executors and assigns, hereinafter referred to as Second Party, and THE UNITED STATES OF AMERICA, hereinafter referred to as the Government, WITNESSETH:

Whereas, on the 1st day of January 1943 First Party executed and delivered to the Government Lease No. W-2287-eng-16522, the term of which began 1 January 1943 through June 30, 1943, for the lands contained therein; and,

Whereas, said lease was amended by Supplemental Agreement No. 1 to provide for automatic renewal; and,

21 *Whereas*, on the 3rd day of June 1946, the First Party by Warranty Deed, recorded in Book G.M. at Page 432, Richland County Records, Columbia, South Carolina, sold the tract of land covered by said lease to Patti A. Shannon and W. L. Shannon, Second Party herein; AND

Whereas, it is the mutual desire of the parties hereto to amend said lease so as to show the present owner of the land covered by said lease and to provide for the payment of the rental thereafter to accrue.

Now, Therefore, for and in consideration of the premises, the mutual agreements of the parties hereto, and One ($1.00) Dollar, it is mutually agreed as follows; effective as of mid-night 3 June 1946.

1. Delete from Paragraph 1 of said lease the following: "Mrs. Kathleen P. Boshamer, Mrs. Eva P. Summers, Mrs. Amy P. Lybrand, Mrs. Julia P. Porter, Miss Joan Porter and N. D. Porter, Jr., whose address is c/o Mrs. C. C. Boshamer, New Hope Road, Gastonia, N. C.", and insert in lieu thereof the following: "Patti A. Shannon and W. L. Shannon, Whose address is R.F.D. #3, Columbia, S. C.".

2. It is mutually agreed that the rental for said lease for the period ending at mid-night 30 June 1946, shall be paid to First Party herein.

3. First party herein agrees and hereby releases and discharges the Government, its officers and agents, of and from all actions, liabilities and claims against the Government, its officers and agents, for damages to or waste of the lands covered by said lease, or any part thereof, occasioned by the occupancy thereof by the Government prior to the conveyance thereof by

First Party to Second Party, to-wit: June 3, 1946.

22 4. The Lessor warrants that he has not employed any person to solicit or secure this lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the lease, or, in its discretion, to deduct from the rental the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by lessors upon contracts or leases secured or made through bona fide established commercial or selling agencies maintained by the lessor for the purpose of securing business.

5. Second Party herein, Patti A. Shannon and W. L. Shannon, agrees to, and does hereby accept all the terms, conditions and requirements of said original lease.

In Witness Whereof, the parties hereto have executed this instrument as of the day and year first above written.

WITNESSES:

(s) JAS. A. SMITH

(s) MRS. KATHLEEN P. BOSHAMER
Mrs. Kathleen P. Boshamer
First Party

(s) MRS. EVA P. SUMMERS
Mrs. Eva P. Summers, *First Party*.

(s) MRS. AMY P. LYBRAND
Mrs. Amy P. Lybrand, *First Party*

(s) MRS. JULIA I. PORTER
Mrs. Julia I. Porter, *First Party*

(s) MISS JOAN PORTER
Miss Joan Porter, *First Party*

(s) N. D. PORTER, JR.
N. D. Porter, Jr., *First Party*

23 Patti A. Shannon, *Second Party*
W. L. Shannon, *Second Party*
THE UNITED STATES OF AMERICA
By Contracting Officer.

The Second Parties, in executing this Supplemental Agreement, hereby remise, release and forever discharge the Government, its officers, agents, and employees of and from any and all manner of actions, liability, and claims (except for unpaid rent due for the period ending April 22, 1947) against the Government, its officers and agents, which the Lessor has or ever will have for the restoration of said premises, or by reason of any other matter, cause or thing whatsoever particularly arising out

of said lease and the occupancy by the Government of the aforesaid premises, however, this waiver and release shall not be construed to apply to any legal claim for damages which the Second Parties may have by reason of damages, if any, to timber, terraces, fencing, and to land caused by army vehicles, tank implacements, and digging of fox holes, resulting in destruction of terraces and erosion during Government occupancy, and Second Parties expressly reserve the right to file and prosecute their claim for such damages so excepted from this release.

Witnesses:

(s) J. S. MOORE

(s) PATTI A. SHANNON
Patti A. Shannon, *Second Party*
(s) W. L. SHANNON
W. L. Shannon, *Second Party*

RELEASE

(Introduced in evidence at pages 78-79 of the transcript of testimony, Filed June 6, 1950)

24 WHEREAS, on the 1st day of January, 1943, Mrs. Kathleen P. Boshamer, Mrs. Eva P. Summers, Mrs. Amy P. Lybrand, Mrs. Julia I. Porter, Miss Joan Porter, and N. D. Porter, Jr. (Lessors), of the City of Gastonia, County of Gaston, and State of No. Carolina, did lease, demise, and let unto the United States of America certain premises situated in the County of Richland, and State of South Carolina and more particularly described as follows:

All that piece, parcel or tract of land known as the Rawl Place, containing two hundred thirty two and a quarter (232¼) acres, more or less, situate, lying and being on Jackson Creek in the County of Richland, State of South Carolina, and bounded as follows: to wit: toward the North on lands of Ross and lands of Hallmand; toward the East on lands of Hallmand and the run of Jackson Creek; toward the Southwest on Poplar Branch and the lands of Aughtry and lands of Ross, being the tract of land heretofore conveyed to John T. Thorton, Agent for Lina B. Thorton, by Roxie E. Davis, and having such shape, boundaries, courses, and distances as are represented upon the plat of S. Reed Stoney, C.E., dated 3-28-93, recorded in Office of Clerk of Court of Richland County, Plat Book 'A', Page 85, said tract being more particularly described as beginning in the Run of Jackson Creek at a point where the Southwest boundary line of the Hallmand tract, being the Northeast boundary line of the herein described land, intersects the run of Jackson Creek,

thence along the Hallmand line W 50° W a distance of 5600' to a stake, thence in a Southwesterly direction along the joint property line of the land herein described and the Ross tract to a corner 3 X O, thence in a Southerly direction to a point in the run of Poplar Creek, said point being identified as a "Pine Saplin 3 X O", thence down Poplar Creek in a Southerly direction with the meandering of the Branch to Jackson Creek, thence in a Northeasterly direction up the meandering of Jackson Creek to the point of beginning. Excepting 2 tenant houses and the immediate one acre surrounding each.

WHEREAS, the use of said premises is no longer required by the United States of America and possession of said property having been redelivered by the United States of America to the lessor, on the 22nd day of April, 1947.

Now, Therefore, Know All Men by These Presents, that We, Mrs. Kathleen P. Boshamer, Mrs. Eva P. Summers, Mrs. Amy P. Lybrand, Mrs. Julia I. Porter, Miss Joan Porter, and N. D. Porter, Jr., for and in consideration of the sum of One Dollar and other valuable considerations, the receipt of which are hereby acknowledged, have remised, released, and forever discharged, and by these presents do for myself, my heirs, executors, administrators, and assigns, remise, release, and forever discharge the United States of America, its officers, agents, and employees, of and from all manner of actions, liability, and claims (except any unpaid rent for the period ending June 30, 1946) against the United States of America, its officers, agents, and employees which I or they ever had, now have, or ever will have upon, or by reason of any matter, cause, or thing whatsoever, particularly arising out of said lease and the occupation by the United States of America of the aforementioned property.

In Witness Whereof, I have hereunto set my hand and seal this 1st day of May, 1947.

WITNESSES:

(s) DURBIN R. WILSON
(s) W. C. SUMMERS
(s) DURBIN R. WILSON
(s) CARRIE I. LEONHARDT
(s) W. C. SUMMERS
(s) CARRIE I. LEONHARDT

(s) (MRS.) KATHLEEN P. BOSHAMER (SEAL)
Mrs. Kathleen P. Boshamer, Releasor
(s) (MRS.) EVA P. SUMMERS (SEAL)
Mrs. Eva P. Summers, Releasor
(s) MRS. AMY P. LYBRAND (SEAL)

Mrs. Amy P. Lybrand, Releasor
(s) MRS. JULIA I. PORTER (SEAL)
Mrs. Julia I. Porter, Releasor
(s) MISS JOAN PORTER (SEAL)
Miss Joan Porter, Releasor
(s) N. D. PORTER, JR. (SEAL)
N. D. Porter, Jr., Releasor

No. 6129

PORTION OF ORDER REFUSING MOTION TO DISMISS COMPLAINT AND ALLOWING AMENDED COMPLAINT TO BE FILED

Filed in Civil Action No. 1915, November 4, 1948

The fourth ground upon which the United States asked that the plaintiffs' complaint should be dismissed and the return of service quashed was that the suit was brought in violation of the Assignment of Claims Act, 31 USCA 203. It appears from a review of the cases interpreting this Act that the purpose of Congress in passing it was to prevent the United States from being put in a position of having to decide to which of two claimants it would pay money under a contested claim; and then to stand liable for a like sum to the rejected claimant should a court decree that such claimant was the party to whom the money should have been paid. *Martin* v. *National Surety Co.*, 57 S. Ct. 531, 300 U.S. 588, 81 L.Ed. 822. The courts all decree that as between the claimants themselves such an assignment is valid. *Bank of California, National Ass'n.* v. *Commissioner of Internal Revenue*, 133 F. (2) 428; *In Re: Webber Motor Co.*, 52 F. Supp. 742, 55 Am. Bankr. Rep. (N.S.) 340. In this case, however, all of the possible claimants against the United States in this cause of action now are before this Court. The United States will not have to choose which claimant will be paid. This Court will do so and all of the claimants will be bound by the decree and those who are unsuccessful will have had their day in court and will not be heard to return at some later date and set up an unjust claim against the United States for money to which they are not entitled. The rights of all of the possible claimants and of the United States will be finally adjudicated in this one suit. Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., have all answered in this suit and have all admitted the sale of the property to the plaintiffs. They also admit the sale and assignment of any cause of action that they may

have against the United States to the plaintiffs and they stated that they are willing for the plaintiffs to receive any money due them from the United States in this cause of action. Any judgment against the United States that may be rendered in their favor will not be decreed in favor of Samuel Shannon, Patti Shannon and W. L. Shannon, by virtue of an assignment to the Shannons, of a claim, by Kathleen Boshamer, et al. The judgment will be declared against the United States specifically in favor of Kathleen Boshamer, et al. and then by virtue of the answer of Kathleen Boshamer, et al.; and the admitted sale of their claim to the Shannons any proceeds arising therefrom will be awarded the Shannons. This Court
28 cannot see how the United States can be prejudiced by such a proceeding. The fourth ground is overruled.

AMENDED COMPLAINT

Filed in Civil Action No. 1915, December 1, 1948

The Plaintiffs above named [Samuel M. Shannon, Patti A. Shannon, and W. L. Shannon], complaining of the defendants above named [United States of America, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, N. D. Porter, Jr.] alleges:

1. That the United States of America is a sovereign government of which the plaintiffs are citizens and which has made itself subject to suits brought in this Honorable Court by the plaintiffs through its laws and statutes.

2. That the plaintiffs bring this cause of action pursuant to what is commonly known as the Federal Tort Claims Act, 28 U.S.C.A., Chapter 20, Section 931 which provides that the plaintiffs may sue the United States Government in the District Court of the United States in a suit of this kind; and that the plaintiffs' injuries were caused on or after January 1, 1945 as required by that Act.

3. That the defendants, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, N. D. Porter, Jr., all have a cause or causes of action against the defendant, United States of America, which they have assigned to the plaintiffs for a valuable consideration.

4. That the plaintiffs are informed and believe that under the laws of the United States the defendants, Kathleen P.
29 Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., must prosecute any cause of action that they have against the United States of America in their own name.

5. That these defendants have a cause of action against the United States of America and since they have assigned this cause of action to the plaintiffs for a valuable consideration and since they must prosecute this action in their own names they are equitably liable to the plaintiffs for the amount of any judgment that they may recover against the United States of America and they are unwilling parties plaintiff, refusing to aid the plaintiffs in recovering the damages to which the plaintiffs are entitled and leaving the plaintiffs to whistle for the consideration which these defendants sold to the plaintiffs for a valuable consideration.

6. That on January 1, 1943, the United States of America leased from Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr., a piece of property in Richland County, South Carolina, described as follows:

> All that piece, parcel or tract of land known as the Rawl Place, containing two hundred thirty-two and a quarter (232¼) acres, more or less, situate, lying and being on Jackson Creek in the County of Richland, State of South Carolina, and bounded as follows: to wit: toward the North on lands of Ross and lands of Hallmand; toward the East on lands of Hallmand and the run of Jackson Creek; toward the Southwest on Poplar Branch and the lands of Aughtry and lands of Ross, being the tract of land heretofore conveyed to John T. Thorton, Agent for Lina B. Thorton, by Roxie E. Davis, and having such shape, boundaries, courses, and distances as are represented upon the plat of S. Reed Stoney, C. E., dated 3-28-93, recorded in
> 30 Office of Clerk of Court of Richland County, Plat Book "A", page 85, said tract being more particularly described as beginning in the run of Jackson Creek at a point where the Southwest boundary line of the Hallmand tract, being the Northeast boundary line of the herein described land, intersects the run of Jackson Creek, thence along the Hallmand line H 50°W a distance of 5600′ to a stake, thence in a Southwesterly direction along the joint property line of the land herein described and the Ross tract to a corner 3 x 0, thence in a Southerly direction to a point in the run of Poplar Creek, said point being identified as a "Pine Saplin 3 x 0", thence down Poplar Creek in a Southerly direction with the meandering of the Branch to Jackson Creek, then in a Northeasterly direction up the meandering of Jackson Creek to the point of beginning. Excepting 2 tenant houses and the immediate one acre surrounding each.

7. That this lease to the United States of America expressly excepted from its terms certain other property owned by Kathleen P. Boshamer and the other lessors.

8. That on April 30, 1946, Kathleen P. Boshamer and the other lessors, by a Contract of Sale, agreed to sell to Samuel M. Shannon and W. L. Shannon the property that they had leased to the United States of America and also certain other property in the same vicinity which they had not leased to the United States of America and by the terms of this contract of sale, Kathleen P. Boshamer and the others, selling to the Shannons, granted to Samuel M. Shannon and W. L. Shannon any right that they had to a cause of action or to damages against the United States of America for injuries to the land that they agreed to sell to Samuel M. Shannon and W. L. Shannon, done by the United States of America to any of the land sold.

9. That subsequently Samuel M. Shannon assigned to Patti A. Shannon all of his rights under the contract of sale from Kathleen P. Boshamer and the other defendants to Samuel M. Shannon and W. L. Shannon.

10. That by a deed executed on June 3, 1946, and recorded in the Clerk of Court's office for Richland, South Carolina, in Deed Book "GM" at page 432, Kathleen P. Boshamer and the other defendants, except United States of America, conveyed to W. L. Shannon and Patti A. Shannon all of their right, title and interest in and to the above-mentioned land that these defendants had leased to the United States of America and other land that these defendants owned in the same vicinity.

11. That Kathleen P. Boshamer and the other defendants, except United States of America, are equitably liable to W. L. Shannon and Patti A. Shannon for any sum of money that these defendants might become entitled to in this cause of action.

12. That the plaintiffs are informed and believe that agents of the United States of America, while acting for the United States of America and within the scope of their authority, willfully, recklessly, wantonly and fraudulently went upon a part of the land owned, at that time, by W. L. Shannon and Patti A. Shannon or by Kathleen P. Boshamer and the other defendants, who sold this land to the plaintiffs, and destroyed and tore down certain buildings that were on that property and destroyed and injured the land and timber on the land.

13. That this negligent, wilful, reckless, wanton and fraudulent destruction of buildings, timber and injury to the realty occurred on property sold by Kathleen P. Boshamer and the other defendants to the plaintiffs but this was not on any of the property leased by Kathleen P. Boshamer and the other defendants, like situated, to the United States of America.

14. That these tortious acts of the agents of the United States of America took place while the plaintiffs or while Kathleen P.

Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr.; owned the land in question.

15. That the plaintiffs are informed and believe that the acts of the agents of the United States Government which caused the injuries herein complained of took place from time to time from January 1, 1945 until on or about May 15, 1946.

16. That according to the provisions of the laws of the United States of America that government has allowed itself to be sued for the damages herein caused to the plaintiffs by the acts of the agents of the United States of America.

17. That the plaintiffs and the defendants, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., have been damaged by the negligent, reckless, wilful and wanton acts of the agents of the United States of America in the sum of four thousand ($4,000.00) dollars.

18. That the plaintiffs, Patti A. Shannon and W. L. Shannon, are entitled to any part of this sum of money granted to Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter, Jr.

Wherefore, the plaintiffs, Patti A. Shannon and W. L. Shannon, demand judgment against the United States of America in the sum of four thousand ($4,000.00) dollars and for a judgment against Kathleen P. Boshamer and the other defendants like situated for whatever part of this sum of four — ($4,000.00) dollars to which they may be entitled.

(s) C. T. GRAYDON
(s) JOHN GRIMBALL
Attorneys for the plaintiffs

Columbia, S. C.

November 12, 1948

ANSWER OF KATHLEEN P. BOSHAMER, et al.

Filed in Civil Action No. 1915, January 27, 1949

The defendants, Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., answering the Amended Complaint as of November 12, 1948 in the above action would respectfully show:

1. That they admit the allegations of Paragraph One of the said Amended Complaint.

2. That they are without knowledge of some of the allegations contained in Paragraph Two of the said Amended Complaint, and hence neither admit nor deny the same.

3. That answering the allegations of Paragraph Three, the defendants admit that they have sold the described property and assigned and transferred any cause or causes of action which they might have

in connection with the use or abuse of the same during the term of the lease by the United States of America to the plaintiffs herein, but state that they are without knowledge or information as to any damages done to the said property and they have been unwilling to institute or prosecute a damage suit against the United States of America for something they have no knowledge of, and that the defendants are entirely willing for the plaintiffs to recover any damages to which they may be lawfully entitled.

34 4. That the defendants are without knowledge as to the allegations in Paragraph Four, hence neither admit nor deny the same.

5. That answering the allegations of Paragraph Five, these defendants admit that they have sold the described property and any cause or causes of action which they may have in connection with the use or abuse of the same during the lease of the United States of America to the plaintiffs herein have been assigned and transferred, but state that they are without knowledge or information as to any damages done to the said property, and that they have been unwilling to institute or prosecute a damage suit against their Government for something they have no knowledge of; that the defendants are entirely willing for the plaintiffs to recover damages to which they may be lawfully entitled, and did not intend and do not intend to leave the plaintiffs to whistle for any consideration or compensation for any claims for damages which these defendants may have sold to the plaintiffs, but merely desire that the plaintiffs generate the air to produce the whistle referred to in Paragraph Five.

6. That the defendants admit the allegations of Paragraph Six.

7. That the defendants admit the allegations of Paragraph Seven.

8. That the defendants admit the allegations of Paragraph Eight and Paragraph Nine.

9. That the defendants are without knowledge as to the allegations alleged in Paragraph Nine and hence neither admit nor deny the same.

10. That the defendants do not deny the allegations of Paragraph Ten.

11. That these answering defendants admit that they are equitably liable to W. L. Shannon and Patti A. Shannon for any sums of money that these defendants might become entitled to in this cause of action.

12. That these defendants are without knowledge or information as to the allegations contained in Paragraphs Twelve, Thirteen and Fourteen of the said Amended Complaint, but allege that the

35 burden of proving such allegations is upon the plaintiffs, but these defendants are entirely willing and agreeable for the plaintiffs to recover any damages which may have been established as having been done by the proper agents of the United States of America; that these defendants make no claim to such

damages, having assigned their claims or rights, if any, to the plaintiffs, but do deny that they are personally liable or responsible to the plaintiffs or any one else for any act of damage alleged to have been committed, except that they admit the plaintiffs are entitled to the proceeds of any claim for damages which may be established as owed by the United States of America.

13. That the defendants are without knowledge as to the allegations contained in Paragraph Thirteen of the Amended Complaint, and hence deny the same.

14. That these defendants are without knowledge as to the allegations of Paragraph Fourteen, and neither admit nor deny the same.

15. That these defendants are without knowledge as to the allegations of Paragraph Fifteen, and hence neither deny nor admit the same.

16. The defendants do not deny the allegations contained in Paragraph Sixteen.

17. That the defendants are without knowledge or information as to the allegations contained in Paragraph Seventeen of the said Amended Complaint, but these answering defendants do admit that the plaintiffs are entitled to recover any damages done or abuse caused by the negligent, reckless, wilful or wanton acts of proper agents of the United States of America, and it is entirely agreeable to them that the said plaintiffs do recover for any such damages proved to have been done.

18. That the defendants admit the allegations of Paragraph Eighteen of the said Amended Complaint.

Wherefore, the defendants having fully answered the Amended Complaint as of November 12, 1948, deny that they personally are liable or responsible to the plaintiffs or the United States of America or anyone else in any way or for money by reason of the
36 alleged acts or damages, costs or exponses as alleged or claimed in the said Amended Complaint, other than they are willing, and admit that the plaintiffs, Patti A. Shannon and W. L. Shannon, are entitled to the proceeds of any judgment secured by them against the United States of America by reason of any damage done to the property described and referred to in this Amended Complaint.

(s) W. G. FINLEY
W. G. FINLEY,

Attorney for Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia I. Porter, Joan Porter, and N. D. Porter, Jr., Defendants.

York, South Carolina

January 14, 1949

Answer of the Defendant, United States of America

Filed in Civil Action No. 1915, March 18, 1949

The defendant, United States of America, answering the Amended Complaint of the plaintiffs herein, would show as follows:

For A First Defense

1. Admits allegation one.

2. Admits so much of allegations of paragraph two as have reference to what is commonly known as the Federal Tort Claims Act, but is without sufficient knowledge or information to form a belief as to the truth of the remaining portions of the allegations with reference to the time of the alleged injuries.

3. Is without knowledge or information sufficient to form a belief as to the truth of all remaining allegations in said complaint and denies the same.

For A Second Defense

1. Further answering this defendant says that if the parties to the action sustained any damages or injuries, the former owners of the property released the defendant from any claims for
37 damages relative to this property.

For A Third Defense

1. Further answering this defendant says that the alleged cause of action of the plaintiffs is barred by the one year Statute of Limitations provided (sic) for in Title 28 U. S. C., Section 2401-b.

Wherefore defendant having fully answered prays that the complaint of the plaintiffs be dismissed with costs.

Ben Scott Whaley
United States Attorney

By (sgd.) Russell D. Miller
Russell D. Miller
Asst. U. S. Attorney

AMENDED ANSWER OF THE DEFENDANT, UNITED STATES OF AMERICA

Filed in Civil Action No. 1915, June 14, 1949

The defendant, United States of America, answering the Amended Complaint of the plaintiffs herein, would show as follows:

For A First Defense

1. Admits allegation one.

2. Admits so much of allegations of paragraph two as have reference to what is commonly known as the Federal Tort Claims Act, but is without sufficient knowledge or information to form a belief as to the truth of the remaining portions of the allegations with reference to the time of the alleged injuries.

3. Is without knowledge or information sufficient to form a belief as to the truth of all remaining allegations in said complaint and denies the same.

38

For A Second Defense

1. Further answering this defendant says that if the parties to the action sustained any damages or injuries, the former owners of the property released the defendant from any claims for damages relative to this property.

Wherefore defendant having fully answered prays that the complaint of the plaintiffs be dismissed with costs.

BEN SCOTT WHALEY
United States Attorney

By (sgd.) RUSSELL D. MILLER
RUSSELL D. MILLER
Asst. U. S. Attorney

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Filed in Civil Action No. 1915, January 16, 1950

This is an action to recover damages to land caused by soldiers of the United States Army and is brought under the Federal Tort Claims Act (28 USC ss. 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-2680).

In compliance with Rule 52 (a) of the Rules of Civil Procedure, I find the facts specially and state my conclusions of law thereon, in the above cause, as follows:

Findings of Fact

1. On January 1, 1943, the United States of America leased from the other defendants Kathleen P. Boshamer, Eva P. Summers, Amie

P. Lybrand, Julia I. Porter, Joan Porter and N. D. Porter (hereinafter referred to as Kathleen P. Boshamer, et al) a certain piece of property in Richland County, South Carolina, excepting from the property leased two tenant houses and the immediate one acre
39 surrounding each. In addition to the two tenant houses, there was also on these two acres a barn which was not mentioned in the lease.

2. Thereafter, on April 30, 1946, by contract of sale, Kathleen P. Boshamer, et al. agreed to sell to Samuel M. Shannon and W. L. Shannon the lands described in the lease and the two houses and one acre surrounding each of them (upon which a barn was also located), which form the basis of this litigation, and in and by said instrument assigned and transferred to the said Shannons any claim, cause of action or right to damages which the grantors may have then had against the United States of America resulting from and growing out of certain trespasses and injuries caused by its soldiers, agents, servants or employees; that between April 30, 1946, and June 3, 1946, the plaintiff Samuel M. Shannon transferred to Patti A. Shannon all of his right, title, interest and claim in and to said property; that on June 3, 1946, Kathleen P. Boshamer, et al., by deed recorded in Deed Book G. M. page 432, Office of the Clerk of Court of Richland County, South Carolina, conveyed the property, the subject of this action, to Patti A. Shannon and W. L. Shannon.

3. During the months of January and February, 1945, soldiers of the United States Army damaged the tenant houses and the barn in the total amount of Nine Hundred, Seventy Five Dollars ($975.00).

Conclusions of Law

This Court has jurisdiction of the parties and of the subject matter of this action.

The damages to the land herein described were committed by the agents or servants of the United States while acting within the scope of their authority, and these acts were the direct and proxi-
mate cause of the injuries and damages incurred by the plain-
40 tiffs Patti A. Shannon and W. L. Shannon.

The action is not barred by the statute of limitations.

The assignments made in this action are of full force and effect.

Plaintiffs Patti A. Shannon and W. L. Shannon are entitled to judgment in the sum of Nine Hundred, Seventy Five Dollars ($975.00).

/s/ C. C. WYCHE
United States District Judge

Dated:

Spartanburg, South Carolina,

January 14, 1950.

Judgment

Filed in Civil Action No. 1915, January 21, 1950

THIS ACTION having been brought to trial at a District Court held on the 17th day of October, A. D. 1949, and an Order for judgment for the Plaintiffs having been rendered therein by the Court on January 19, 1950 — — — for the sum of Nine Hundred Seventy-five and 00/100 ($975.00) Dollars, and the costs having been adjudged at Twenty-seven and 34/100 ($27.34) Dollars;

Now, on motion of John Grimball, Esq. Attorney for said plaintiffs — — — IT IS ADJUDGED that Plaintiffs, W. L. Shannon and Patti A. Shannon recover of said United States of America — — — Nine Hundred Seventy-five and 00/100 ($975.00) — — — 41 Dollars, so found, with Twenty-seven and 34/100 ($27.34) — — — Dollars, costs.

/s/ Ernest L. Allen
C., D. C. U. S., E. Dist. S. C.
(Seal)

JOHN GRIMBALL, Esq.
Plaintiff's Attorneys.

NOTICE OF APPEAL

Filed in Civil Action No. 1915, March 11, 1950

TO MESSRS: C. T. GRAYDON, JOHN GRIMBALL, ATTORNEYS FOR PLAINTIFF:

Notice is hereby given that the defendant, above named, hereby appeals to the Circuit Court of Appeals for the Fourth Judicial Circuit, from the order of Honorable C. C. Wyche, United States District Judge, enter (sic) in this action on January 14, 1950.

/s/ BEN SCOTT WHALEY,
/s/ RUSSELL D. MILLER,
Attorneys for Defendant

42 **Appendix to Brief of Appellees**

43 INDEX TO APPENDIX

44 Nos. 6128 and 6129

CONTRACT OF SALE

(Plaintiff's exhibit No. 1 to the Transcript of Record, filed in Civil Actions Nos. 1914 and 1915, October 17, 1949 at page 4 of the Transcript of Record.)

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND:

RECEIVED FROM SAMUEL M. AND W. L. SHANNON, purchaser, this 30th day of April, 1946 the sum of Two Hundred ($200) Dollars, on account of the purchase of the following described property:

"all that certain piece, parcel or tract of land, situate, lying and being in the County of Richland, State of South Carolina about eight (8) miles from the City of Columbia, with the improvements thereon, containing two hundred thirty-two and one-fourth (232¼) acres, more or less, and being bounded as follows: on the North by property now or formerly of Holmand, on the East and South by the run of Jackson Creek, and on the west by a creek known as Poplar Branch."

Upon payment of the further sum of Six thousand seven hundred sixty-seven and fifty-one-hundredths ($6767.50) dollars payable as follows: Twenty-eight hundred ($2800.00) dollars within sixty (60) days and the balance of three thousand nine hundred sixty-seven and fifty one-hundredths ($3967.50) within one year from date of delivery of deed, said amount to bear interest at the rate of six (6) per cent per annum, the sellers covenant and agree and bind ourselves, our heirs, executors, administrators and assigns, to convey the said property above described to the said Samuel M. and W. L. Shannon, their heirs or assigns, in fee; by a proper deed, with covenants of general warranty, with dowers duly renounced; free from encumbrances, except such as are herein agreed to be assumed.

And upon tender of such deed the purchasers agree to fully comply with the terms of this contract of sale. All taxes, rents to be pro-rated to date of completion of sale.

45 Upon failure of the purchaser to comply with the terms hereof within the stipulated time the sellers to have the right to retain the amount this day paid, and to enforce the performance of this contract according to law.

It is further agreed that the purchasers are purchasing this property subject to a certain lease over the property now held by the United States Government.

It is further agreed that upon completion of the signing of this contract, the purchasers are to have the right to immediate possession to enable them to commence immediately the building of homes and other buildings.

It is further agreed that, after completion of the sale and after delivery of the deed, the sellers hereby release to the purchasers any claim, reparation, or other cause of action against the United States Government for any damage caused the property during the term of its lease.

It is further agreed that upon completion of the deed and after execution of the mortgage for the balance of the purchase price, the purchasers are to have the right to cut or to have cut the saw-timber on the above described property; provided however, that the value of the timber over and above the amount to be used in improving the said property is to be applied to the payment of the mortgage.

WITNESS the parties hereto by their hands and seal in duplicate the day and year first above written.

As to KATHLEEN P, BOSHAMER and AMY P. LYBRAND:

JACKSON B. COBB (S.)
REDINALD G. LYBRAND (S.)

As to EVA P. SUMMERS, M. D. PORTER, JOAN PORTER and JUEIA I. PORTER:

REGINALD GUY LYBRAND (S./S.)
VINCENT I. SMITH (S.)

As to SAMUEL M. SHANNON and W. L. SHANNON:

JACKSON B. COBB (S.)
REGINALD G. LYBRAND (S.)

KATHLEEN P. BOSHAMER (S.)
AMY P. LYBRAND (S.)
EVA P. SUMMERS (S.)
N. D. PORTER (S.)
JOAN PORTER (S.)
JULIA I. PORTER (S.)
SELLERS

SAMUEL M. SHANNON (S.)
W. L. SHANNON (S.)
PURCHASERS

46. (Plaintiff's exhibit No. 8, to the Transcript of Record, filed in Cases 1914 and 1915 at page 80 of the Transcript of Record.)

WAR DEPARTMENT
OFFICE OF THE DIVISION ENGINEER

South Atlantic Division
1316 Washington Street
Columbia 23, S. C.

23 December, 1946.

Mailing Address: Postoffice Box 4114, Atlanta 2, Georgia.
AJM/e ts

Mrs. Cary C. Boshamer,
New Hope Road,
Gastonia, North Carolina

DEAR MRS. BOSHAMER:

Since considerable time has elapsed, this office is again writing you regarding the Supplemental Agreement, forwarded to you under date of June 21, 1946, for signature.

This office is in the process of returning to the owners the leased property in the North Camp Area, Fort Jackson. We are desirous of returning this property as soon as possible to Patti A. and W. L. Shannon, who purchased this land from you, and it will be necessary that the Supplemental Agreement, changing ownership of the property, be signed and in effect before complete disposal can be made.

It will be appreciated if you will give this matter immediate attention, since it has been pending for about six months and this office is anxious to complete disposal of the North Camp Area.

Yours very truly,

(Signed) ANDREW J. MAUNEY,
Acting Project Manager,
Columbia RE Project Office

47 Testimony of Witness SAMUEL M. SHANNON:

Line 15 page 17 to line 9 page 19, of the Transcript of Record, filed in Civil Actions Nos. 1914 and 1915.

Q. Now, did you have any dealings with the United States Government agent to try to get these damages settled?

A. Yes, sir.

Q. What were those dealings, Mr. Shannon?

A. The Government sent two parties out there; a timber estimator and Mr. Fort over there to estimate the damages on the land. I suppose that was Mr. Fort's position. And, we walked all over the place and looked at those holes. And, they left and after a

few weeks, there was a party out there with some kind of papers they wanted signed up, and they told us we would have to get two reliable men in the neighborhood that knowed the place before the Government taken it and knowed it then after they released it, to examine the place and make a statement before a Notary Public, and to turn them statements over to the Government before they would settle. And, we got Mr. Peckham, the Agricultural teacher of that highschool out there in that district, and a Mr. Brown. Mr. Brown lived adjoining this place before and afterwards. And, they both walked over the place there a day or so and looked it all over and made these statements before a Notary Public, and signed them, and we turned them over to the Government, or the agent, whoever the gentleman was. And, later on, there was a gentleman out there, but I wasn't home that day. * * *

Q. Well, then, you don't know that. Don't tell what he told you. But, another agent came out there, is that right?

A. Yes, sir.

Q. Well, did you have any further conversation with any more government agents yourself?

A. Yes, sir.

Q. What were those?

A. Mr. Fort there came back out there about a year after that, and he got me. He said he wanted to go back over the place and look it over again. Well, he and I went. I went with him. We didn't count all of the holes, but we just walked across a
48 place at the upper side and came back across the other side. It's about two miles round trip. And, he was writing all the time in his book. And, he told me to count those large holes—how many large holes there was—and to let him know. Well, I counted fifty-eight of those large holes. Well, I cleared up eight acres of the land. I got a tractor to level it down to where I could get in there, and to plow it up for me. And, the man measured it. It was eight acres. I know positively it was eight acres in that tract. Well, I got some land and I filled up forty-seven holes in that eight acres.

Testimony of Witness W. L. SHANNON:

Line 14 pg. 49 to line 2 page 51, of the Transcript of Record, filed in Civil Actions Nos. 1914 and 1915.

Q. What did you pay for this land to the Boshamers?

A. Thirty dollars an acre.

Q. Thirty dollars an acre?

A. Yes, sir.

Q. And I believe you reserved to yourself the claim against the Government that they had?

A. Yes, sir.

Q. Did you have dealings with the agents for the United States Government to try to get these claims settled?

A. Yes, sir.

Q. What were those dealings you had, Mr. Shannon?

A. Well, we were notified through the mail that the lease expired at a date, I believe the twenty-first of April in '47. And, they had a field officer down here, and I would go by and ask how to proceed to file a claim for this damage. They had a form and required affidavits from two parties that were familiar with the place. And, that's the way it was filled out. Those statements were secured from these two parties and turned over to them. And, after sometime—I don't know how long but probably three or four months—they sent a representative of the Government out to my house with a paper for me to sign. And, I refused to sign it at
that time because there was a clause in there that was a
49 release on our behalf of this claim against the government.
He said, "If that's all you want, I'll be back. I'll get this fixed and I'll come back." And, he did after about a week. He came back one time and I wasn't at home. But, anyway, he came and I was home. I read it and it was on there protecting our behalf about the rent and claims against the Government for this damage. I read it and I said that that was sufficient. He said, "All that is necessary is for you to sign this and to return it to Atlanta. They're waiting on it to get this matter straightened up. They want to dispose of it." I sent it and shortly after that I was advised that we didn't have any consideration at all with the Government.

Q. Did that man see your mother at the same time?

A. Yes, sir.

Q. And I believe she signed the same paper then?

A. Yes, sir.

50

PROCEEDINGS IN THE UNITED STATES' COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 6128

UNITED STATES OF AMERICA, APPELLANT,

versus

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON, APPELLEES.

Appeal from the United States District Court for the Eastern District of South Carolina, at Columbia

June 12, 1950, the record on appeal is filed and the cause docketed.

ORDER EXTENDING TIME FOR PERFECTING APPEAL

Filed June 12, 1950.

In The District Court of the United States
For The Eastern District of South Carolina
Columbia Division

Civil Action No. 1914

SAMUEL M. SHANNON, et al. PLAINTIFFS,

vs.

UNITED STATES OF AMERICA, et al. DEFENDANTS.

ORDER

Filed April 20, 1950

Ernest L. Allen,—C. D. C. U. S. E. D. S. C.

On motion of Russell D. Miller, Assistant United States Attorney, attorney for the defendant, and by and with the consent of John Grimball, attorney for the plaintiff:

IT IS ORDERED that the time for perfecting the appeal in the
51 above entitled cause be and the same is hereby extended for a period of ninety days from the date of this order.

Dated at Columbia, South Carolina this 17th day of April, 1950.

GEORGE BELL TIMMERMAN
United States District Judge

I move the foregoing order:

RUSSELL D. MILLER
Assistant United States Attorney
Attorney for Defendant

I consent:

JOHN GRIMBALL
Attorney for Plaintiff

June 12, 1950, the original exhibits are certified up.

June 14, 1950, the appearance of Ben Scott Whaley, United States Attorney, and Russell D. Miller, Assistant United States Attorney, is entered for the appellant.

June 14, 1950, petition of appellant for further extension of time to perfect appeal is filed.

ORDER FURTHER EXTENDING TIME TO PERFECT APPEAL

Filed June 14, 1950.

(Style of Court and Title Omitted)

Upon consideration of the foregoing Petition and it appearing to the satisfaction of the Court that an extension of time in
52 which to perfect the appeal and docket said case is necessary in order to protect the rights of the defendant United States;

IT IS THEREFORE ORDERED that the time for perfecting the appeal in the above case be and the same is hereby extended for a period of thirty (30) days from the date of this order, and that the time for the Clerk of the District Court of the United States for the Eastern District of South Carolina to docket the above entitled cause in this Court be likewise extended for such a period.

JOHN J. PARKER
Chief Judge,
United States Court of Appeals,
Fourth Circuit

Dated: June 8, 1950

June 15, 1950, the appearance of C. T. Graydon and John Grimball is entered for the appellees.

June 28, 1950, the appearance of A. Devitt Vanech, Assistant Attorney General, Roger P. Marquis, and Harold S. Harrison, Attorneys, Department of Justice, is entered for the appellant.

September 12, 1950, brief and appendix for appellant are filed.

September 23, 1950, brief and appendix for appellees are filed.

ARGUMENT OF CAUSE

October 5, 1950, (October term, 1950) cause came on to be heard, together with No. 6129, before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

53 OPINION—Filed January 3, 1951

United States Court of Appeals, For The Fourth Circuit

No. 6128

UNITED STATES OF AMERICA, APPELLANT,

versus

SAMUEL M. SHANNON, PATTI A. SHANNON and W. L. SHANNON, APPELLEES

No. 6129

UNITED STATES OF AMERICA, APPELLANT,

versus

SAMUEL M. SHANNON, PATTI A. SHANNON and W. L. SHANNON, APPELLEES

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT COLUMBIA

(Argued October 5, 1950. Decided January 3, 1951.)

Before PARKER, SOPER and DOBIE, Circuit Judges.

54 Harold S. Harrison, Attorney, Department of Justice, (A. Devitt Vanech, Assistant Attorney General, Benjamin Scott Whaley, U. S. Attorney, Russell D. Miller, Assistant U. S. Attorney, and Roger P. Marquis, Attorney, Department of Justice, on brief) for Appellant, and John Grimball and C. T. Graydon for Appellees.

PARKER, Circuit Judge:

These are appeals by the United States in two cases relating to damage to real estate, one of which was instituted under the Tucker Act and the other under the Federal Tort Claims Act. In 1943, the United States leased from Mrs. Kathleen P. Boshamer and others a tract of land, excepting therefrom two tenant houses and an acre of land surrounding each house. The suit under the Tucker Act

was instituted to recover damages under the lease contract to the land covered by the lease. The suit under the Federal Tort Claims Act was to recover damages to the two houses not covered by it. The trial judge found the amount of the damage to the land covered by the lease to be $2,050 and to the houses not covered to be $975, and entered judgments for these amounts in favor of plaintiffs. The United States does not contest the correctness of the finding as to damages, but denies the right of plaintiffs to recover, because of the provisions of the anti-assignment statute, 31 USCA 203. The judgment in the Tucker Act case embraces a recovery of $202.74 for rents due plaintiff which is admitted to be proper.

The facts with respect to the assignment are that in 1946 Mrs. Boshamer and the other owners of the land joined in a deed in which they conveyed it to plaintiffs subject to the lease then outstanding in the United States and transferred to plaintiffs any cause of action they might have against the United States for damage done the property during the term of the lease.[1] Following this transaction, agents of the United States had the parties to enter into a tripartite written contract[2] with each other and with the United States setting
55 forth the conveyance of the land from Mrs. Boshamer and others to plaintiffs, fixing the date to which rent should be paid to vendors and after which it should be paid to plaintiffs, stating that vendors released the United States from all claims on account of damage to the land and reserving to plaintiffs all claims on account of such damage. It is to be noted that this contract, to which the United States was a party, contained an addendum signed by plaintiffs in which their rights to damages during government occupancy were specifically reserved. In 1947, when turning back the land to the owners, and investigating the amount of claims for which it was liable, the United States obtained from the vendors, but not from plaintiffs, a release of all claims arising out of occupation of the property. Not until after this had been done did it raise any question as to the validity of the assignment.

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[1] It was agreed that the cause of action be transferred by a contract to convey dated April 20, 1946. The deed of conveyance was dated June 3, 1946.

[2] This contract bears date of June 20, 1946, but was evidently executed at a later date, since a letter of Dec. 23, 1946, refers to the necessity of having such an agreement executed. It contains an addendum reserving to plaintiffs claims arising out of government occupancy and use, and counsel for plaintiffs contend that this was added because plaintiffs refused to sign the agreement without of this reservation.

All of the damages awarded in the judgments were incurred during the term of the lease and prior to the acquisition of the property by plaintiffs; and it is perfectly clear that in the assignment of claims to plaintiffs and in the other actions taken with regard thereto, both the plaintiffs and the vendors were acting under the mistaken assumption that such assignments were perefctly valid and would vest in plaintiffs the right to recover against the government any amount for which the government might be liable thereon. It is a fair assumption also that, when accepting the tripartite agreement and obtaining later the release from vendors, the agents of the United States knew that both plaintiffs and vendors were laboring under this mistake of law.

By amended complaints filed in the cases, the vendors were made defendants and it was alleged that they had transferred to plaintiffs, along with the conveyance of the land, their claims to recover from the United States on account of damages thereto and that they refused to help plaintiffs recover on the claims. Vendors filed answer stating that they made no claim to any damages to the lands "having assigned their claims or rights, if any, to the plaintiffs" and admitted that "the plaintiffs are entitled to the proceeds of any claim for damages which may be established as owed by the United States." On the basis of these admissions and the other facts to which we have adverted, the District Judge held that plaintiffs were not precluded from relief by the anti-assignment statute, saying:

> "It appears from a review of the cases interpreting this Act that the purpose of Congress in passing it was to prevent the United States from being put in a position of having to decide to which of two claimants it would pay money under a
> 56 contested claim; and then to stand liable for a like sum to the rejected claimant should a court decree that such claimant was the party to whom the money should have been paid. Martin v. National Surety Co. 57 S. Ct. 531, 300 U. S. 588, 81 L. Ed. 822. The courts all decree that as between the claimants themselves such an assignment is valid. Bank of California, National Ass'n v. Commissioner of Internal Revenue 133 F. 2d 428; In re: Webber Motor Co. 52 F. Supp. 742, 55 Am Bankr. Rep. (N. S.) 340. In this case, however, all of the possible claimants against the United States in this cause of action now stand before the judicial forum. The United States will not have to choose which claimant will be paid. This court will do so and all of the claimants will be bound by the decree and those who are unsuccessful will have had their day in court and will not be heard to return at some later date and set up an unjust claim against the United States for money to which they are not entitled. The rights of all of the possible claimants and of the United States will be finally adjudicated

in this one suit and that will be an end to the matter. Kathleen P. Boshamer, Eva P. Summers, Amy P. Lybrand, Julia J. Porter, Joan Porter, and N. C. Porter, Jr., have all answered in this suit and have all admitted the sale of the property and the lease in question to the plaintiffs. They also admit the sale of any cause of action that they may have against the United States to the plaintiffs and they state that they are willing for the plaintiffs to receive any money due them from the United States in this cause of action. These parties, Kathleen P. Boshamer, et al, are not merely passive parties in interest in this suit. They have been brought into this court as active parties-plaintiff by the other plaintiffs. Any judgment against the United States that may be rendered in their favor will not be decreed in favor of Samuel Shannon, Patti Shannon and W. L. Shannon, by virtue of an assignment to the Shannons, of a claim, by Kathleen Boshamer, et al. and then by virtue of the answer of Kathleen Boshamer et al. The judgment will be declared against the United States specifically in favor of Kathleen Boshamer, et al. and the admitted sale of their claim to the Shannons any proceeds arising therefrom will be awarded the Shannons."

We think that this holding of the District Judge on the facts of the case before us is essentially correct. We think it clear that the assignment involved falls within the terms of the anti-assign-
57 ment statute.* And we are not impressed by the argument that under the tripartite contract a new and independent claim was created in favor of plaintiffs which would not be subject to the statute. That instrument merely recognized the assignment of existing claims which had not then been allowed and could have no more validity than the assignment itself. Nor are we impressed with the argument that the statute has been waived; for, while the statute may be waived by proper agents of the government after the claim has been allowed, it may not be waived in advance of allowance. *Goodman* v. *Niblack*, 102 U. S. 556, 560.

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* The anti-assignment statute here involved is 31 USCA 203, the pertinent part of which provides:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof * * *".

It by no means follows, however, that plaintiffs are not entitled to relief. The effect of the statute is not to invalidate the claims but merely their assignment. The vendors could unquestionably recover upon them unless precluded by the releases that they have executed; and, since the assignment is good between the parties although not against the United States,[3] any recovery which the vendors might obtain could be impressed with a trust in favor of plaintiffs.[4]

58 It is clear that the assignment to plaintiffs and the releases executed by the vendors were the result of mutual mistake as to the law applicable in the premises and that, laboring under such mistake plaintiffs both accepted the assignment and executed the tripartite contract with regard thereto. It is unthinkable that a court of equity should be without power to grant relief under such circumstances. The power to relieve against mistakes of law as well as of fact in proper cases is well settled.[5] The power of a court of equity to allow suits in the name of the assignor of claims not assignable at law for the benefit of the assignee is equally well established.[6] And with all parties before the court, and with the strong equity arising out of the mistake of both plaintiffs and vendors, established beyond peradventure, there is no reason in law or in morals why the court should not relieve against the mistake and grant recovery on the claim for the benefit of the parties equitably entitled to the proceeds. Whether the mistake of law here involved would be sufficient to warrant reformation or to serve as a defense in equity, it is not necessary to decide. It is certainly sufficient, taken with the other facts and circumstances of the case, to warrant the court in allowing the plaintiffs to bring the vendors into the case and

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[3] *McKenzie* v. *Irving Trust Co.*, 323 U. S. 365, 369; *Martin* v. *National Surety Co.* 300 U. S. 588, 594-598; *Lay* v. *Lay* 248 U. S. 24; *McGowan* v. *Parish* 237 U. S. 285; *National Refining Co.* v. *United States* 8 Cir. 160 F. 2d 951; *Bank of California* v. *Com'r of Internal Revenue* 9 Cir. 133 F. 2d 428, 432-433; *California Bank* v. *United States F. & G. Co.* 9 Cir. 129 F. 2d 751, 752-753; In re Webber Motor Co. 52 F. 2d 742.

[4] *Martin* v. *National Surety Co.* 300 U. S. 588, 597.

[5] See *Commercial Cas. Ins. Co.* v. *Lawhead* 4 Cir. 62 F. 2d 928; *Clarksburg Trust Co.* v. *Commercial Cas. Inc. Co.* 4 Cir. 40 F. 2d 626; *Philippine Sugar Estates Development Co.* v. *Philippine Islands* 247 U. S. 385; *Griswold* v. *Hazard* 141 U. S. 260; *Snell* v. *Ins. Co.* 98 U. S. 85; Pomeroy's Equity Jurisprudence 4th ed. vol. 2 p. 1711 et seq.

[6] *Fourth Street Bank* v. *Yardley* 165 U. S. 634, 644; *Hinkle* v. *Wanzer* 17 How., 353, 367-368; 4 Am. Jur. Assignments pp. 230, 232, 247, 269, 281, and cases there cited. And see particularly *United States* v. *American Tobacco Co.* 166 U. S. 468.

requiring that it be prosecuted in their name for the use and benefit of plaintiffs.

It should be noted, in this connection, that the relief granted on the ground of mistake is primarily between the private parties. Vendors have the right to recover at law on the claims notwithstanding the assignment, since the effect of the statute is to invalidate the assignment, not the claims; and what is being done is to require them, because of the mistake of law under which all parties were acting in making the assignment, to sue on the claim for the benefit of those who are equitably entitled under the agreement made. It is argued that the vendors have released the government from liability under the claim therefore cannot maintain suit on it; but the answer is that this release was the result of mistake on the part of the vendors as their answer clearly shows. This does not mean that the government is held liable or estopped by reason of the mistake of its agents, but merely that it may not take an
59 unconscionable advantage of the mistakes made by private parties in their dealings with it and with each other.

It is suggested that the relief here granted is contrary to the decision in *United States* v. *Gillis* 95 U. S. 407. That case, however, decided merely that an assignee of a claim against the United States could not recover on it by suit in his own name in the Court of Claims; and such decision is manifestly not controlling here. In so, far as the reasoning of the case supports a strict construction of the statute, this has been repudiated by the Supreme Court in the comparatively recent case of *Martin* v. *National Surety Co.* 300 U. S. 588, 596-597, where the Court said:

> "The advocates of literalism find color of support in a line of decisions made in very different circumstances from these, but tending none the less to a strict construction of the statute. National Bank of Commerce v. Downie, 218 U.S. 345; Nutt v. Knut, 200 U.S. 12; Spofford v. Kirk, 97 U.S. 484; United States v. Gillis, 95 U.S. 407. We do not pause to inquire with reference to all the cases whether the necessities of the judgment were as broad as the words of the opinion. * * * Another line of cases exhibit an opposing tendency. Lay v. Lay, 248 U.S. 24; Portuguese-American Bank v. Welles, 242 U.S. 7, 11, 12; McGowan v. Parish, supra; Freedman's Saving & T. Co. v. Shepherd, 127 U.S. 494, 506; Hobbs v. McLean, supra; Bailey v. United States, 109 U.S. 432, 439; Goodman v. Niblack, 102 U.S. 556, 559; McKnight v. United States, supra; Erwin v. United States, 97 U.S. 392. Cf. York v. Conde, 147 N.Y. 486; 42 N.E. 193, dismissed 168 U.S. 642. These cases teach us that the statute must be interpreted in the light of its purpose to give protection to the Government. * * * To the extent that

the two lines of cases are in conflict, the second must be held to be supported by the better reason."

In the light of the purpose of the statute "to give protection to the government," we agree with the District Judge that there is no ground to .pplying it to deny recovery in a case such as this.

The government argues that the effect of this is to nullify the statute; but we do not think so. Relief is granted, not merely because plaintiffs are assignees, nor even because the vendors have been made parties to the suit, but because of the mistake that led to the making of the assignment, which was a part of the consideration for the purchase price paid by plaintiffs for the land conveyed to them. The relief is given to the assignees, not as a mat-
60 ter of law, but as a matter of equity because of the mistake involved and the hardship which would otherwise result. The government is protected in its right to assert any defenses, counterclaims or set offs that it may have against the original claimants, who have been made parties to the suit. No precedent is created which might lead to the evils that the statute was designed to prevent, for the relief is granted in the exercise of the equitable powers of the court which may not be availed of except in circumstances of hardship such as are here presented.

61 SOPER, Circuit Judge, Dissenting:

The decision of the court invites further discussion, since it seems to nullify the Federal Anti-Assignment Statute in 1853, R. S. § 3477, 31 U.S.C.A. § 203, insofar as the instant case is concerned, and to suggest a procedural pattern for future cases that will virtually destroy the statute, and to violate the principle that no one may sue the United States without its consent.

The statute declares that all transfers and assignments of any claim against the United States shall be absolutely null and void unless they are executed in the presence of two witnesses, after the allowance of the claims, the ascertainment of the amount due, and the issuance of any warrant for payment thereof. Its primary purpose was to prevent influential persons from buying claims against the government and urging them improperly upon the officers of the government. Another purpose was to prevent multiple payment of claims, to make unnecessary the investigation of alleged assignments, and to enable the government to deal only with the claimant. *U. S.* v. *Aetna Surety Co.*, 338 U.S. 366, 373. It has been enforced, subject to certain limitations not pertinent in this case, for ninety-seven years.

The Act was passed at a time when there was no general act permitting suits against the United States; and it prohibited officers of the government, engaged in the allowance of claims without suit,

from giving any consideration to assigned or transferred claims. Permissive statutes allowing suit against the United States have subsequently been enacted but none of them repeals the Assignment Act expressly or by implication. The Court of Claims was established by the Act of February 24, 1855, 10 Stat. 612, and was given jurisdiction to hear and determine all claims founded upon any law of Congress or any regulation of an executive department or any contract, express or implied, with the United States; but it was held in *U. S.* v. *Gillis*, 95 U.S. 407, that this statute did not repeal the Act of 1853 or make claims assignable which, before its enactment, were incapable of assignment. The court said that the words of the Act "embrace every claim against the United States, however arising, of whatever nature it may be, and wherever and whenever presented."

The Tucker Act of March 3, 1887, c. 359, 24 Stat. 505, gave the District and Circuit Courts of the United States concurrent jurisdiction with the Court of Claims as to claims against the United States when the amount did not exceed $10,000; and it has never been suggested that this Act in any way repealed R.S. § 3477.

The Federal Tort Claims Act of 1946, 60 Stat. 842, conferred upon the District Courts of the United States jurisdiction to hear and determine claims against the United States for damages
62 to property caused by the torts of its employees; but it was held in *U. S.* v. *Aetna Ins. Co.*, 338 U. S. at 370 that neither the terms of the Act nor its legislative history precluded the continued application of R.S. § 3477.

The strictness which characterized the interpretation of the assignment statute in the earlier cases has been somewhat relaxed and claims have been excepted from its scope which might seem to be covered by its express terms. They include involuntary assignments compelled by law without any act of the parties, such as devolution of title, the passing of claims to heirs, devisees or assignees in bankruptcy, &c. which were not subject to the evil at which the Act was aimed.*

The interpretation of the statute has not been relaxed, however, as to voluntary assignments which have always been regarded as subject to the prohibitions of the Act. This has been the rule in the Court of Claims: *Elizabeth Smith* v. *U.S.*, 96 Ct. Cls. 326; *Bolivar Cotton Oil Co.* v. *U. S.*, 95 Ct. Cls. 182; *Hitchcock* v. *U. S.*, 27 Ct. Cls. 185, affirmed 164 U.S. 227; and in the Federal Courts

* See the cases cited in Note 1, p. 6 in the opinion of the court. In all of them a claim against the United States had been allowed and the money had been paid by the United States either to one of the parties to the assignment or into court. In none of the cases was any claim asserted against the government.

of Appeal; *Coates* v. *U. S.*, 4 Cir., 53 F. 989; *Greenville Svgs. Bank* v. *Lawrence*, 4 Cir., 76 F. 545; *U. S.* v. *South Carolina State Highway Dept.*, 4 Cir., 171 F. 2d 893, 899; *23 Tracts of Land* v. *U. S.*, 6 Cir., 177 F. 2d 967.

In *Martin* v *Nat'l Surety Co.*, 300 U.S. 588, 596-7, the court made it clear that the strict rule has not been abandoned "where the claims against the government, which were the subject of the assignment, had never been allowed, much less collected"; but that "after payments have been collected and are in the hands of the contractor, the subsequent payees, with notice of assignments, may be heeded at all events in equity if they will not frustrate the ends to which the prohibition was directed."

The discussion of the scope and meaning of the statute by Chief Justice Vinson in *U. S.* v. *Aetna Surety Co.*, 338 U.S. 366, shows the way to the solution of the problem in the pending case. The point actually decided was that nothing in R.S. § 3477 prevents an Insurance Company from bringing an action under the Federal Tort Claims Act in its own name on a claim of the insured against the United States to which the insurer has become subrogated by payment to the insured. The Government at first took the position that assignments by operation of law are exempt from the bar of the assignment statute only when procedural difficulties as to the government are involved. This contention was rejected on the authority of prior decisions and also on the ground that
63 the Tort Claims Act itself indicates that a subrogated claim may be the subject of an action against the United States. Next, the Government took the position that although the subrogee of a claim might recover if it sued in the name of the insured to its use, it could not recover in a suit in its own name. The argument in effect was that R.S. § 3477 does not prevent the assignment of substantive rights against the United States but merely controls the method of procedure by which the assignee may recover. The court also rejected this argument, saying: (338 U.S. at 372, Note 8)

> "• • • This position is in square conflict with Spofford v. Kirk, 97 U.S. 484, and is not justified by anything said in Martin v. National Surety Co., 300 U.S. 588. Furthermore, it would require that the real party in interest provisions of the Federal Rules of Civil Procedure, Rule 17(a), be disregarded, despite the fact that they are made specifically applicable to suits under the Tort Claims Act, and that suits against the Government in which a subrogee owns the substantive right be conducted according to the old common-law procedures in effect prior to the promulgation of the Federal Rules. Petitioner admits as much by its reliance upon United States v. American Tobacco Co., 166 U.S. 468. This

is not to say that R.S. 3477 was 'repealed' by the Federal Rules, but that a new interpretation of the statute which is incompatible with the Rules, as expressly incorporated in the Tort Claims Act, must be clearly justified."

Thus it appears from the most recent decision of the Supreme Court that the substantive provisions of the statute, which invalidate assignments of claims against the United States, are still possessed of vitality, and may not be circumvented by the procedural expedient of bringing suit against the United States in the name of the assignor. In one of the pending cases the complaint is based upon the Tucker Act for damages to the land in breach of the contract of lease; in the other upon the Tort Claims Act for damages to property outside the lease caused by the negligence of the government employees. The decisions in *U. S.* v. *Gillis* and *U. S.* v. *Aetna Surety Co., supra,* are therefore applicable. Nevertheless, the court in the pending case adopts the procedural approach, declares that the claim is good and valid in the hands of the assignee, and requires the United States to pay it. The supporting argument is that the statute does not void claims, but only the assignment of claims, against the United States, and hence under equitable principles, an assignor may sue the United States on the claim in his name for the benefit of the assignee and any recovery will be impressed with a trust in favor of the assignee.

64 This is the premise on which the argument is based; but it is directly opposed to the decision in *U. S.* v. *Aetna Surety Co., supra,* that the statute was not designed merely to require suit in the name of the assignor. Moreover, the pending suit was not brought by the assignor but by the assignee against the United States and the assignor. It is pointed out in the opinion of this court that since all the parties to the assignments are before the court, the Government has the right to assert any defense, counterclaim or setoff, that it may have against the original claimants. It is hardly worth while to say that these defenses would be available to the United States in any case unless the claim were negotiable. The unescapable and controlling fact is that the suits are based on assignments and if it is adjudged that they are tenable, the United States will be required to inquire into the relationship and transactions between the parties, and the very purpose of the Act will be defeated.

A great deal is said in regard to the inequity and injustice of enforcing the statute upon parties who entered into the transaction under a mistake of law, supposing that the assignments were good. Heretofore in this case no one has relied on the theory of mistake. There was no mention of mistake in the formal pleadings, or in the evidence, or in the judgment of the District Court, or in the

briefs in this court, doubtless for the reason that the parties well understood that they could not rid themselves of an Act of Congress by showing that they were unaware of it. The authorities on "Mistake", cited in the opinion Note 3, p. 6, relate to transactions between private parties in which the Government had no share, and hence have no bearing on the pending case. It is quite plain that little or nothing will be left of the statute if the plan devised to relieve the parties to this case from its terms is given the sanction of the courts. All that an assignee need do will be to bring suit on the assigned claim against the United States and join the assignor as party defendant or as an unwilling plaintiff under Federal Rules of Civil Procedure, 28 U.S.C.A. Rule 19, and the statute will be as lifeless as if it had been repealed by Act of Congress.

It may be helpful to state the facts in chronological order so that it may be clearly seen that the officers of the United States had no part whatsoever in the transaction by which the claims against the United States were assigned to the plaintiff and were in no way to blame for any mistaken notion of the law, which the parties may have entertained at that time. The facts stated most favorably to the plaintiffs are as follows: On January 1, 1943, the United States leased a tract of land of approximately 232 acres from Kathleen P. Boshamer and others at the annual rental of $250, renewable from year to year upon thirty days' notice to the lessors. Two small frame houses and an acre of land belonging to the lessors were excepted from the lease. On May 30, 1944 the parties to the lease entered into Supplemental Agreement No. 1
65 amending the lease so as to make it renewable from year to year without further notice. On April 10, 1946 the Shannons, plaintiffs in this case, bought the leased land subject to the lease and an additional acre from Mrs. Boshamer and other owners for $30 an acre. The Shannons had then recently made two sales of land in the neighborhood at prices in excess of $100 per acre, and they testified that land in the neighborhood was worth $100 an acre and that the Boshamer tract, which consisted of 150 acres of tillable land beside woodland, was the best farm in the county. The damages to the leased land and the small tract from the occupancy by the United States, according to the plaintiffs' witnesses, amounted to $3,125. It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless. These were included with the land as part of the consideration for the purchase price without much concern on the part of the sellers who stated in their pleadings in this case that they had no knowledge of the damages but were willing that the buyers should have them for whatever they were worth.

The first contact that the Shannons had with the government

officers took place after the assignments were executed, when the officers prepared a document called Supplemental Agreement No. 2, which was dated June 20, 1946 but was probably not executed until the early part of 1947 when the Government was preparing to surrender the lease and return the property to the owners. The property was actually surrendered on or about April 21, 1947. The Supplemental Agreement No. 2 made no real change in the rights or obligations of the parties to the assignments. It provided for the substitution in the lease of the names of the purchasers in place of the names of the sellers of the land; and that the rental up to June 30, 1946 should be paid to the sellers; and thereafter to the plaintiffs; and that the sellers should release the Government from all liability for damages to the land prior to June 3, 1946. The Shannons on their part accepted all the terms of the original lease and document was signed by the sellers, the purchasers and officers of the Government. Appended to the agreement was a separate statement, signed only by the Shannons, in which they released the Government from all liability for the restoration of the premises except that the release should not apply to any claim for damages which the Shannons might have for injury to the timber, fencing, digging of holes, &c. by the United States.

It will be noticed that the claims against the government had been assigned long before the supplemental agreement was executed and that the government officers had no share in that transaction. The evidence indicates, however, that the Shannons were unwilling to sign Supplemental Agreement No. 2 until the appended paragraph was added, and hence it was prepared and added to the agreement by the government agents. In the opinion of the court it is
66 assumed that when the agreement was signed, the agents of the United States knew that the parties to the assignments were laboring under a mistake of law; but if this be the fact it has no bearing on the validity of the assignments since they were executed in the previous year, entirely without government intervention or assistance.

The United States has never consented to be sued in a case like the one at bar.

67 JUDGMENT

Filed and Entered January 3, 1951

United States Court of Appeals for the Fourth Circuit

No. 6128

UNITED STATES OF AMERICA, APPELLANT

vs.

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON, APPELLEES

Appeal from the United States District Court for the Eastern Dis- of South Carolina

This cause came on to be heard on the record from the United States District Court for the Eastern District of South Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed with costs.

January 3, 1951.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

On another day, to-wit, February 3, 1951, the mandate of this Court, in this cause, is issued and transmitted to the United States District Court at Columbia, South Carolina, in due form.

Same day, the original record and exhibits are returned to the Clerk at Columbia, South Carolina.

April 28, 1951, the record on appeal and exhibits are received from the Clerk of the District Court.

68 PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6129

UNITED STATES OF AMERICA, APPELLANT

versus

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON, APPELLEES

Appeal from the United States District Court for the Eastern District of South Carolina, at Columbia

June 12, 1950, the record on appeal is filed and the cause docketed.

ORDER EXTENDING TIME FOR PERFECTING APPEAL

Filed June 12, 1950

In the District Court of the United States for the Eastern District of South Carolina, Columbia Division

Civil Action No. 1915

SAMUEL M. SHANNON, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

ORDER

On motion of Russell D. Miller, Assistant United States Attorney, attorney for defendant, and by and with the consent of John
69 Grimball, attorney for the plaintiffs:

It Is Ordered that the time for perfecting the appeal in the above entitled cause be and the same is hereby extended for a period of ninety days from the date of this order.

Dated at Columbia, South Carolina this 17th day of April, 1950.

GEORGE BELL TIMMERMAN,
United States District Judge.

I move the foregoing order.

RUSSELL D. MILLER,
Assistant United States Attorney,
Attorney for Defendant.

I consent.

JOHN GRIMBALL,
Attorney for Plaintiff.

Filed April 20, 1950. Ernest L. Allen, C.D.C.U.S.E.D.S.C.

June 12, 1950, the original exhibits are certified up.

June 14, 1950, the appearance of Ben Scott Whaley, United States Attorney, and Russell D. Miller, Assistant United States Attorney, is entered for the appellant.

June 14, 1950, petition of appellant for further extension of time to perfect appeal is filed.

ORDER FURTHER EXTENDING TIME TO PERFECT APPEAL

Filed June 14, 1950

(Style of Court and Title Omitted).

Upon consideration of the foregoing Petition and it appea ing to the satisfaction of the Court that an extension of time in wh ch to perfect the appeal and docket said case is necessary in order to protect the rights of the defendant United States;

70 It Is Therefore Ordered that the time for perfecting the appeal in the above case be and the same is hereby extended for a period of thirty (30) days from the date of this order, and that the time for the Clerk of the District Court of the United States for the Eastern District of South Carolina to docket the above entitled cause in this Court be likewise extended for such a period.

JOHN J. PARKER,
Chief Judge, United States Court of Appeals, Fourth Circuit.

Dated: June 8, 1950.

June 15, 1950, the appearance of C. T. Graydon and John Grimball is entered for the appellees.

June 28, 1950, the appearance of A. Devitt Vanech, Assistant Attorney General, Roger P. Marquis and Harold S. Harrison, Attorneys, Department of Justice, is entered for the appellant.

September 12, 1950, brief and appendix for appellant are filed.

September 23, 1950, brief and appendix for appellees are filed.

ARGUMENT OF CAUSE

October 5, 1950 (October Term, 1950) cause came on to be heard, together with No. 6128, before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

OPINION

Filed January 3, 1951

NOTE: This opinion appears at Page 27 and is therefore omitted here.

71 JUDGMENT

Filed and Entered January 3, 1951

United States Court of Appeals for the Fourth Circuit

No. 6129

UNITED STATES OF AMERICA, APPELLANT

vs.

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON, APPELLEES

Appeal from the United States District Court for the Eastern District of South Carolina

This Cause came to to be heard on the record from the United States District Court for the Eastern District of South Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby affirmed, with costs.

January 3, 1951.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

On another day, to-wit, February 3, 1951, the mandate of this Court, in this cause, is issued and transmitted to the United States District Court at Columbia, South Carolina, in due form.

Same day, the original record and exhibits are returned to the Clerk at Columbia, South Carolina.

April 28, 1951, the record on appeal and exhibits are received from the Clerk of the District Court.

72 STIPULATION

In the Supreme Court of the United States
October Term, 1950

UNITED STATES OF AMERICA, PETITIONER

vs.

SAMUEL M. SHANNON, ET AL., RESPONDENTS

STIPULATION

Subject to This Court's Approval, It Is Hereby Stipulated and Agreed, by and between counsel for the respective parties to the above-entitled cause, that, for the purpose of the petition for a writ

of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record may consist of the following:

1. Appendix to brief of Appellant in the United States Court of Appeals for the Fourth Circuit.
2. Appendix to brief of Appellees in the United States Court of Appeals for the Fourth Circuit.
3. The proceedings had before the United States Court of Appeals for the Fourth Circuit.

It Is Further Stipulated and Agreed that Petitioner will cause the Clerk of the United States Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court of the United States the complete certified record on appeal.

73 It Is Further Stipulated and Agreed that the parties hereto may refer in their briefs and argument to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.
JOHN GRIMBALL,
C. T. GRAYDON,
Counsel for Respondents.

April 19, 1951

74 CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the appendix to brief of appellant, appendix to brief of appellees, and the proceedings in the said Court of Appeals in the therein entitled causes, as the same remain upon the records and files of the said Court of Appeals, and constitute and is a true transcript of the record and proceedings in the said Court of Appeals in said causes, made up in accordance with the stipulation of counsel for the respective parties, for use in the Supreme Court of the United States on applications for writs of certiorari.

In Testimony Whereof, I hereto set my hand and affix the seal of the said United States Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 28th day of April, A. D. 1951.

[SEAL.]

CLAUDE M. DEAN,
Clerk of the United States Court of Appeals for the Fourth Circuit.

75 SUPREME COURT OF THE UNITED STATES

October Term, 1950

No. —

UNITED STATES OF AMERICA, PETITIONER

vs.

SAMUEL M. SHANNON, PATTI A. SHANNON, & W. L. SHANNON

UNITED STATES OF AMERICA, PETITIONER

vs.

SAMUEL M. SHANNON, PATTI A. SHANNON, & W. L. SHANNON

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cases be, and the same is hereby, extended to and including May 7th, 1951.

(S.) FRED M. VINSON,
Chief Justice of the United States.

Dated this 21st day of March 1951.

☆ U. S. GOVERNMENT PRINTING OFFICE, 1951 944125 756

Supreme Court of the United States

[Title omitted.]

Order allowing certiorari

Filed October 8, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

971803—51——1

U. S. GOVERNMENT PRINTING OFFICE: 1951

In the Supreme Court of the United States

OCTOBER TERM, 1950

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 721

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTI A. SHANNON AND W. L. SHANNON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on January 3, 1951.[1]

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[1] The opinion of the court of appeals covers two cases, one of which was instituted under the Tucker Act and the other under the Federal Tort Claims Act. These cases were numbered 6128 and 6129, respectively, in the court of appeals. The Government believes that the judgments of the court below are erroneous in both cases. However, in order to simplify the issue, this petition seeks a writ of certiorari to review only the judgment entered in the Tort Claims Act case, *i.e.*, No. 6129.

OPINIONS BELOW

The district court did not write an opinion. Its findings of fact and conclusions of law appear in the record at pages 26-27.[2] The majority and dissenting opinions of the court of appeals (R. 39-50) are reported at 186 F. 2d 430.

JURISDICTION

The judgments of the court of appeals, affirming the judgments of the district court, were entered on January 3, 1951 (R. 51, 54). By order of the Chief Justice dated March 21, 1951, the time for filing a petition for writ of certiorari in this cause was extended to May 7, 1951 (R. 56). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether voluntary assignees of claims against the United States for property damage may recover in a suit against the United States, despite non-compliance with the Anti-Assignment Act, 31 U.S.C. 203, by the expedient of joining their assignors as parties defendant or unwilling plaintiffs.[3]

STATUTE INVOLVED

Section 3477 of the Revised Statutes, as amended, 31 U.S.C. 203, provides as follows:

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[2] A portion of an order, in which the district court discusses its reasons for refusing to dismiss the complaint as being brought in violation of the Anti-Assignment Act, 31 U.S.C. 203, is printed in the record at pp. 18-19.

[3] A similar question is presented in the petition for a writ of certiorari in *United States of America* v. *Jordan*, No. 720, filed together with this petition.

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. * * *

STATEMENT

The facts in this case may be summarized as follows: In 1943, the United States leased a tract of land from Kathleen P. Boshamer and others as joint owners. Two one-acre plots of land, each containing a frame tenant house, were excepted from the leased tract (R. 27). In April, 1946, Kathleen Boshamer and the other owners entered into a contract with respondents whereby respondents agreed to purchase the tract of land which was the subject of the lease, including the two acres which had never been included in the lease. The sale contract purported to assign to respondents any claims which the vendors had against the United States for any damages caused to the property during the term of the lease (R. 33). Thereafter, the joint owners conveyed the entire property to respondents (R. 10, 27). At the time the sale contract,

which included the assignment of the claims against the United States, was entered into, the damage here involved had already occurred (R. 12, 41).

Respondents, as sole plaintiffs, instituted this action against the United States in the United States District Court for the Eastern District of South Carolina under the Federal Tort Claims Act (now 28 U.S.C. 1346(b)) to recover for the damages caused by the allegedly tortious acts of agents of the United States in destroying the two frame tenant houses which were located on the two one-acre plots that had been excepted from the lease. The former owners of the property, Kathleen Boshamer, *et al.*, were formally named as parties defendant, but the complaint alleged that they were joined as unwilling plaintiffs (R. 20). In their answer, Kathleen Boshamer, *et al.*, filed a disclaimer stating that they had no knowledge as to whether the property had been damaged and for this reason declined to act as parties plaintiff (R. 22-24).

The district court concluded that the assignment was valid and rendered judgment solely in favor of respondents as assignees. The Court of Appeals for the Fourth Circuit affirmed the judgment (R. 54), Judge Soper dissenting (R. 45-50).

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals that the assignees of a voluntary assignment of claims against the United States are entitled to recover

from the Government on such assigned claims, is plainly at variance with the express command of the Anti-Assignment Act, 3477 R. S., 31 U. S. C. 203, *supra*, pp. 2-3, that assignments of claims against the United States "shall be absolutely null and void" unless made in compliance therewith. The holding of the court below is likewise in conflict with the interpretation of the statute followed and recognized by this Court throughout the life of the statute. This Court has consistently recognized and held that *voluntary* assignments of claims against the United States, as distinguished from assignments by operation of law, are *null and void* unless such assignments comply with the Anti-Assignment Act, or unless the terms of that statute have been properly waived by the Government.[4] *United States* v. *Gillis*, 95 U. S. 407, 413-414; *Spofford* v. *Kirk*, 97 U. S. 484, 488-489; *McKnight* v. *United States*, 98 U. S. 179, 185, 186; *Bailey* v. *United States*, 109 U. S. 432, 436-437; *St. Paul Railroad* v. *United States*, 112 U. S. 733, 736; *Flint and Pere Marquette Railroad Co.* v. *United States*, 112 U. S. 762; *Freedman's Saving Co.* v. *Shepherd*, 127 U. S. 494, 505-506; *Hager* v. *Swayne*, 149 U. S. 242, 247; *Ball* v. *Halsell*, 161 U. S. 72, 78; *Price* v. *Forrest*, 173 U. S. 410, 422; *Nutt* v. *Knut*, 200 U.S. 12, 19-20; *National Bank of Commerce* v. *Downie*,

[4] There is, of course, no question that the assignment of the claims pertinent to this petition was not made in compliance with the Anti-Assignment Act; nor were the provisions of that statute waived by the Government with respect to the assignment of the claims here involved.

218 U. S. 345, 351-352; *Western Pacific Railroad Co.* v. *United States*, 268 U. S. 271, 275; *Martin* v. *National Surety Co.*, 300 U. S. 588, 594; *McKenzie* v. *Irving Trust Co.*, 323 U. S. 365, 367; *United States* v. *Aetna Casualty & Surety Co.*, 338 U. S. 366, 370.[5]

2. Despite their conclusion that the assignees in this case were entitled to recover, the majority of the court below stated in their opinion, "We think it clear that the assignment involved falls within the terms of the anti-assignment statute" (R. 42).[6] Nevertheless, they affirmed the judgment which had been entered solely in favor of the assignees.[7]

This ruling was apparently founded on the view that the Anti-Assignment Act was not violated because both the assignors and the assignees were before the court and were bound by the judgment, and on the further view that the entry of the judgment in favor of the assignees was justified by the fact that the assignors, who had refused to prose-

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[5] The only exceptions noted by this Court with respect to voluntary assignments of claims made to take effect before allowance are general assignments for the benefit of creditors (*Goodman* v. *Niblack*, 102 U. S. 556) and transfers by will (*Erwin* v. *United States*, 97 U. S. 392, 397).

[6] Since the damage alleged in this case had been done prior to the sale of the property to the assignees, the only possible basis for recovery by the assignees was the assignment of the claim for damages which they had received from their vendors.

[7] The trial court in its opinion overruling the Government's motion to dismiss stated that judgment would be entered solely in favor of the assignors (R. 19). However, the judgment was finally entered solely in the names of the assignees (R. 28).

cute the claims, had filed disclaimers after they had been made unwilling plaintiffs. Thus, the position taken by the majority of the court below was that the Anti-Assignment Act is simply a procedural limitation upon the method of collecting assigned claims. As we have pointed out, the statute expressly provides to the contrary. Instead of indicating that assignments of claims against the United States are merely voidable, it expressly states that attempted assignments "shall be absolutely null and void" unless made in accordance with its terms. We submit that the unequivocal language of the statute, supported by the consistent pronouncements of this Court throughout the statute's existence (see *supra*, pp. 5-6), removes all controversy that the statute is one of substance which wholly invalidates all voluntary assignments falling within its prohibitory purview. In these circumstances, its command may not be evaded by the simple expedient of making the assignor an unwilling party to the suit and then relying on his disclaimer to vest the assignee with the right to take judgment in his own name. In other words, if an assignment which comes within the prohibition of the statute is void, it is axiomatic that it is wholly void.[8]

[8] As this Court stated in *Spofford* v. *Kirk*, 97 U. S. 484, 490, "We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void * * *".

It will be observed, as Judge Soper pointed out in his dissenting opinion, that the court below and other lower courts have previously treated the statute as one of substance which renders assignments void, and not merely as a procedural limitation that may be overcome by the joinder of the assignor as an unwilling plaintiff. That is, if the assignment is one which the statute declares to be void, the mere fact that the assignor is a party to the suit does not authorize recovery by the assignee. See, *e.g.*, *23 Tracts of Land, Etc.* v. *United States*, 177 F. 2d 967, 970 (C.A. 6); *United States* v. *South Carolina State Highway Dept.*, 171 F. 2d 893, 899 (C.A. 4); *Greenville Sav. Bank* v. *Lawrence*, 76 Fed. 545, 546 (C.A. 4); *H. M. O. Lumber Co., et al.* v. *United States*, 40 F. 2d 544 (W.D. Mich.). See also *Coates* v. *United States*, 53 Fed. 989 (C. A. 4); *Bolivar Cotton Oil Co.* v. *United States*, 95 C. Cls. 182, 186-187; *Smith* v. *United States*, 96 C. Cls. 326, 342; *Hitchcock* v. *United States*, 27 C. Cls. 185, affirmed *sub nom. Prairie State Bank* v. *United States*, 164 U. S. 227.

3. Under the holding of the court below, the various purposes of the Anti-Assignment Act will be defeated. While the principal purpose of the Act was to prevent influential persons from buying claims against the Government and urging them improperly upon officials, this Court and lower Federal courts have held that the Act embodies several other purposes. Among these are

the following: "to make unnecessary the investigation of alleged assignments, and to enable the Government to deal only with the original claimant" (*United States* v. *Aetna Surety Co.*, 338 U. S. 366, 373); "that the government might not be harassed by multiplying the number of persons with whom it had to deal, and might always know with whom it was dealing until the contract was completed and a settlement made" (*Hobbs* v. *McLean*, 117 U. S. 567, 576; cf. *Goodman* v. *Niblack*, 102 U. S. 556, 560); "to protect the Government from traffic in claims against it" (*Sherwood* v. *United States*, 112 F. 2d 587, 592 (C.A. 2), reversed on other grounds, 312 U. S. 584). It is clear that these purposes, long declared by this and other courts, are largely defeated by the majority holding in the instant case. Thus, an investigation of the alleged assignment has been necessary. The Government has not been able to deal only with the original claimant. The number of persons with whom the Government has to deal has been multiplied. There has been traffic in a claim against the United States.[9] As Judge Soper pertinently said in his dissent (R. 48):

> The unescapable and controlling fact is that the suits are based on assignments and if it is

[9] Though Congress by enacting the statute sought to prevent the buying of such claims against the United States, respondent Samuel M. Shannon testified on cross-examination that he understood that he was "buying a claim against the Government" (R. 13), and it is, at least, doubtful whether the assignors would have ever asserted the claim against the United States.

adjudged that they are tenable, the United States will be required to inquire into the relationship and transactions between the parties, and the very purpose of the Act will be defeated.

4. The majority opinion below is also based on the misconception that equitable principles are applicable and appropriate in the instant proceeding (R. 45). Neither is the case. It is well settled that the command of the Anti-Assignment Act cannot be avoided by the application of equitable principles. See *United States* v. *Gillis*, 95 U.S. 407, 413-414;[10] *Spofford* v. *Kirk*, 97 U.S. 484, 489; *National Bank of Commerce* v. *Downie*, 218 U.S. 345, 354; *Hitchcock* v. *United States*, 27 C. Cls. 185, 206-208, affirmed *sub nom. Prairie State Bank* v. *United States*, 164 U.S. 227.

Moreover, "Any ordinarily prudent person in purchasing property takes into consideration its condition at the time of the purchase. It is reasonable to assume that plaintiff did so." *Smith* v. *United States*, 96 C. Cls. 326, 342. In the instant case, it affirmatively appears that respondents took into consideration the condition of the property at the time of the purchase. On cross-examination, in response to the question "At the time you acquired the place, you knew all of these damages had been done," Mr. Shannon answered "Sure" (R. 12);

[10] The ground upon which the majority below believed that this case was "manifestly not controlling here" (R. 44) does not appear.

and, as the dissenting judge observed (R. 49), "It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless." There was, therefore, no basis for granting equitable relief to the assignees, even if the granting of such relief had been permitted by the statute.

5. It is patent that the decision of the court below tends sharply toward destruction of the Anti-Assignment Act. Under that decision, an assignment of a claim, which, under the declaration of the statute, is null and void when the claim is presented to an administrative officer for payment, becomes valid as soon as the assignor has been made a party to a suit brought by the assignee against the United States and has waived his right to the claim. If a void assignment can be validated by this simple procedure, the provisions of the statute become nugatory. Furthermore, serious administrative difficulties are likely to arise. For, while the fiscal and accounting officers of the Government will be required to refuse to honor assignments of this type when presented to them, no matter how meritorious the claims may be, the assignees can readily have the assignments enforced in a court of law. In these respects, the rule of the decision below creates an anomalous situation which ought not to be allowed to prevail; that decision should be reviewed and corrected by this Court.

CONCLUSION

For the foregoing reasons, it is submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

MAY, 1951.

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No. 47

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTY A. SHANNON AND W. L. SHANNON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The district court did not write an opinion. Its findings of fact and conclusions of law appear in the record at pages 26-27. The majority and dissenting opinions of the court of appeals (R. 39-50) are reported at 186 F. 2d 430.[1]

[1] The opinion of the court of appeals covers two cases, one of which was instituted under the Tucker Act and the other under the Federal Tort Claims Act. These cases were numbered 6128 and 6129, respectively, in the court of appeals. The Government believes that the judgments of the court below are erroneous in both cases. However, in order to simplify the issue, a writ of certiorari was sought to review only the judgment entered in the Tort Claims Act case, *i.e.*, No. 6129.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 1951 (R. 54). By order of the Chief Justice dated March 21, 1951, the time for filing a petition for a writ of certiorari in this cause was extended to May 7, 1951 (R. 56). The petition for a writ of certiorari was filed on May 3, 1951, and was granted on October 8, 1951. The jurisdiction of this Court rests on 28 U.S.C. 1254.

QUESTION PRESENTED

Whether voluntary assignees of claims against the United States for property damage may recover in a suit against the United States, despite non-compliance with the Anti-Assignment Act, 31 U.S.C. 203, by the expedient of joining their assignors as parties defendant or unwilling plaintiffs.[2]

STATUTE INVOLVED

Section 3477 of the Revised Statutes, as amended, 31 U.S.C. sec. 203, provides as follows:

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed

[2] A similar question is presented in *United States of America v. Jordan*, No. 46, this Term.

in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

* * *

STATEMENT

The facts in this case may be summarized as follows: In 1943, the United States leased a tract of land from Kathleen P. Boshamer and others as joint owners. Two one-acre plots of land, each containing a frame tenant house, were excepted from the leased tract (R. 27). In April 1946, Kathleen Boshamer and the other joint owners (hereafter referred to as "the Boshamers") entered into a contract with respondents whereby respondents agreed to purchase the tract of land which was the subject of the lease, including the two acres which had never been included in the lease. The sale contract purported to assign to respondents any claims which the vendors had against the United States for any damages caused to the property during the term of the lease. (R. 33.) Thereafter, the Boshamers conveyed the entire property to respondents (R. 10, 27). The leased property was returned by the United States on April 22, 1947 (R. 4, 7).

Respondents, as sole plaintiffs, instituted this action against the United States in the United States District Court for the Eastern District of South Carolina under the Federal Tort Claims Act (now 28 U.S.C. 1346(b)). Recovery was sought

for the damages caused by alleged tortious acts of agents of the United States in destroying the two frame tenant houses located on the two one-acre plots excepted from the lease (R. 19-22). In addition to the United States, the Boshamers were named as defendants (R. 19). The complaint alleged that the Boshamer defendants must prosecute any cause of action they have against the United States in their own name (paragraph 4, R. 19). It was then alleged (paragraph 6, R. 20) that these defendants have a cause of action against the United States, that they are equitably liable to the plaintiffs for the amount of any judgment they may recover, and that they are unwilling parties plaintiff refusing to aid the plaintiffs in recovering damages to which plaintiffs are entitled.

The Boshamers filed an answer (R. 22-24) stating (paragraph 3) that they had sold any cause or causes of action but "that they are without knowledge or information as to any damages done to the said property and they have been unwilling to institute or prosecute a damage suit against the United States of America for something they have no knowledge of, and that the defendants are entirely willing for the plaintiffs to recover any damages to which they may be lawfully entitled." This answer further stated (paragraph 12) that these defendants "do deny that they are personally liable or responsible to the plaintiffs or any one else for any act of damage alleged to have

been committed, except that they admit the plaintiffs are entitled to the proceeds of any claim for damages which may be established as owed by the United States of America."

The district court found that during January and February, 1945—prior to the assignment by the Boshamers to the respondents, in April 1946—soldiers of the United States Army damaged the tenant houses and the barn in the total amount of $975.00 (R. 27). Early in the proceedings, in denying the Government's motion to dismiss raising, among other things, the Anti-Assignment Act, R.S. 3477, 31 U.S.C. 203, the court had reasoned that all parties were before the court, that judgment would be awarded in favor of the Boshamers and any proceeds arising therefrom would be awarded the respondents (the Shannons) (R. 1-2). However, its conclusions of law stated that "the assignments made in this action are of full force and effect" and that the Shannons were entitled to judgment. Judgment was accordingly entered in favor of the Shannons against the United States. (R. 27-28.)

The Court of Appeals for the Fourth Circuit affirmed, holding that there is no ground for applying the Anti-Assignment Statute to deny recovery in a case such as this (R. 39-45). Judge Soper dissented (R. 45-50).

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

1. In holding that while "the assignment involved falls within the terms of the anti-assignment statute" (R. 42), recovery could nevertheless be had on the claim against the United States by the assignees.

2. In affirming the judgment of the district court.

SUMMARY OF ARGUMENT

I

The purported assignment of the claim for damages for tort, made more than a year after the damage had occurred, clearly did not conform to the limitations of Anti-Assignment Act, and under the plain language of that Act was null and void. This Court has consistently held such an assignment to be invalid and has recognized the invalidity of voluntary assignments in cases holding that transfers by operation of law were not within the statutory prohibition. The assignment here was purely voluntary and cannot be said to be a transfer by operation of law. It follows that the judgment, which can only be supported by reference to the assignment, is erroneous.

II

The statute does not, as the court below thought, permit the validation of assignments by the simple expedient of joining the assignor as a party to the suit. Rather, it declares the attempted assignment

to be "absolutely null and void." Decisions of both this Court and the lower federal courts recognize that the statute is one of substance rendering assignments invalid, and is not merely a procedural limitation on the mode of their enforcement.

Moreover, the authorities are clear that the effect of the Act is the same whether the claim be asserted before an administrative agency or the courts. The decision below violates this established principle and produces the anomalous result of judicial enforcement of an assignment which the fiscal and accounting officers of the government must refuse to honor.

Finally, the statute has many purposes other than simple avoidance of the risk of double recovery. These purposes, among which is to make it unnecessary for the government to investigate alleged assignments, would be frustrated under the view adopted below.

III

There is no grant of authority to the courts to make the assignment effective on equitable principles. This follows from the rule, already noted, that application of the statute is the same wherever the claim may be asserted, *i.e.*, administratively or judicially. Moreover, the decided cases recognize that the statute embraces legal and equitable assignments alike. Cases applying equitable principles to the distribution of funds after the government's interest has ceased do not justify

the use of such principles to make invalid assignments effective against the United States. Finally, there are, in the instant case, no facts justifying the granting of such equitable relief.

ARGUMENT[3]

I

The Assignment of the Claim to Respondents Was Prohibited by the Anti-Assignment Statute

The damage for which recovery was allowed in this suit under the Federal Tort Claims Act occurred in January and February, 1945. The contract of sale of the property in which the Boshamers purported to assign any claim against the United States was executed more than a year later, in April, 1946 (R. 27, 32-33). At that time, the Boshamers had simply a claim against the United States for tort damages for injury to the buildings. No claim had then been allowed, the amount due had not been ascertained, and no warrant had issued. Indeed, the Boshamers have never asserted such a claim. Under the express language of the Anti-Assignment Act, R.S. 3477, 31 U.S.C. sec. 203, *supra*, pp. 2-3, the assignment was "absolutely null and void." This Court has consistently held that such a voluntary assignment is of no effect as against the United States and cannot be the basis

[3] For convenience, our argument is set forth fully in this brief, without reference to, or incorporation of, the argument in *United States* v. *Jordan*, No. 46, which is similar, and, in part, identical.

of a judgment against the United States. *United States* v. *Gillis*, 95 U.S. 407; *McKnight* v. *United States*, 98 U.S. 179; *St. Paul Railroad* v. *United States*, 112 U.S. 733; *Flint and Pere Marquette Railroad Co.* v. *United States*, 112 U.S. 762; *Hager* v. *Swayne*, 149 U.S. 242; *National Bank of Commerce* v. *Downie*, 218 U.S. 345. Decisions which have established the principle that transfers by operation of law are not within the prohibition of the statute recognize that purely voluntary assignments are invalid. *United States* v. *Aetna Surety Co.*, 338 U.S. 366, 370; *Western Pacific Railroad Co.* v. *United States*, 268 U.S. 271, 275; *Price* v. *Forrest*, 173 U.S. 410, 422; see also *Martin* v. *National Surety Co.*, 300 U.S. 588, 594; *Nutt* v. *Knut*, 200 U.S. 12, 19-20; *Ball* v. *Halsell*, 161 U.S. 72, 78; *Freedmen's Saving Co.* v. *Shepherd*, 127 U.S. 494, 505-506; *Bailey* v. *United States*, 109 U.S. 432, 436-437; *Spofford* v. *Kirk*, 97 U.S. 484, 488-489.[4] There is no basis in the instant case for application of the exception relating to transfers by operation of law. The majority opinion below recognizes (R. 42) that "the assignment involved falls within the terms of the anti-assignment statute." As this Court said, with reference to voluntary assign-

[4] The only exceptions noted by this Court with respect to voluntary assignments of claims made to take effect before allowance are general assignments for the benefit of creditors (*Goodman* v. *Niblack*, 102 U.S. 556) and transfers by will (*Erwin* v. *United States*, 97 U.S. 392).

ments, in *National Bank of Commerce v. Downie*, 218 U. S. 345, 356:

> They are clean-out cases of a voluntary transfer of claims against the United States, before their allowance, in direct opposition to the statute. If any regard whatever is to be had to the intention of Congress, as manifested by its words—too clear, we think, to need construction—we must hold such a transfer to be absolutely null and void, and as not, in itself, passing to the appellants any interest, present or remote, legal or equitable, in the claims transferred.

In the instant cases, judgment for the assignees can be supported only by giving effect to the assignment, as the trial court recognized in its conclusions of law (R. 27). The judgment is thus in direct opposition to the plain language of the statute. In the discussion to follow, we shall show that the reasoning by which the majority below sought to escape the effect of this plain language cannot be sustained.

II

The Anti-Assignment Statute Does Not Represent a Mere Procedural Limitation Which Is Satisfied When All Parties Are Before the Court

The majority of the court below took the view that since both the assignors and assignees were before the court and bound by the judgment, and since the assignors, who had refused to prosecute the claim, had filed disclaimers, the judgment is

not contrary to the statute. Thus, the Court of Appeals' position is that the Anti-Assignment statute is simply a procedural limitation upon the method of collecting assigned claims. This must have been the court's view because the only material difference between the present case and the landmark decision in *United States* v. *Gillis*, 95 U.S. 407, which the majority below said "is manifestly not controlling here" (R. 44), is the fact that here the assignors have been joined as parties.

But the statute does not declare that the assignment is merely voidable and may be validated by the presence of both assignor and assignee before the tribunal. On the contrary, it declares the attempted assignment to be "absolutely null and void." This Court, in *United States* v. *Aetna Surety Co.*, 338 U.S. 366, 372, fn. 8, made it clear that the statute is one of substance which wholly invalidates assignments falling within its prohibitory purview. Earlier, in *Spofford* v. *Kirk*, 97 U.S. 484, 490, it was stated:

> We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void, that they are valid and effective as between the parties thereto, and only invalid when set up against the government.

And the lower federal courts have treated the statute as one of substance invalidating voluntary assignments and not merely as a procedural limitation that may be overcome by joining the assignor as an unwilling plaintiff. See, e.g., *23 Tracts of Land, Etc.* v. *United States,* 177 F. 2d 967, 970 (C.A. 6); *Greenville Sav. Bank* v. *Lawrence,* 76 Fed. 545, 546 (C.A. 4); *H. M. O. Lumber Co., et al.* v. *United States,* 40 F. 2d 544 (W.D. Mich.). See also *Coates* v. *United States,* 53 Fed. 989 (C.A. 4); *Smith* v. *United States,* 96 C. Cls. 326, 342; *Bolivar Cotton Oil Co.* v. *United States,* 95 C. Cls. 182, 186-187; *Hitchcock* v. *United States,* 27 C. Cls. 185; affirmed *sub nom. Prairie State Bank* v. *United States,* 164 U.S. 227.

There is another particular in which the view that recovery can be allowed on assigned claims whenever the assignor is joined as a party to the suit is contrary to precedent, as well as to the theory of the statute. In *United States* v. *Gillis,* 95 U.S. 407, the Court rejected the argument that the Act applied only to claims asserted before the Treasury Department (in which the fiscal and accounting offices were then located) and not to suits in the Court of Claims, stating (p. 413 and p. 416): "The words embrace every claim against the United States, however arising, of whatever nature it may be, and wherever and whenever presented," and the act "is of universal application, and covers all claims against the United States in every tribunal in which they may be asserted." See also

Ball v. *Halsell*, 161 U.S. 72, 78; *National Bank of Commerce* v. *Downie*, 218 U.S. 345, 352. The decision below, resting as it does on procedural rules applicable to the courts, would create a difference in the effect of the statute, depending upon the governmental authority before which the claim was asserted. The result of the holding is that while the fiscal and accounting officers would be required to refuse to honor an assignment when the claim is presented to them, the assignment becomes valid as soon as suit is brought, and the assignor is joined as a party and waives his right to the claim. Far from intending any such anomalous result, with its attendant administrative difficulties, Congress intended the statute to have uniform application. The contrary argument is, we submit, substantially the contention rejected long ago in the *Gillis* case. See 95 U.S., at 414-416.

The view that the purposes of the statute are not violated if the assignor is joined as a party likewise ignores settled principles. Avoidance of possible double recovery is not the only purpose of the statute (cf. R. 41). Indeed, the primary purpose was to prevent persons of influence from buying up claims against the United States, which might then be improperly urged upon officers of the Government. *United States* v. *Aetna Surety Co.*, 338 U.S. 366, 373. Other purposes are "to make unnecessary the investigation of alleged assignments, and to enable the Government to deal only with the original claimant" (*United States* v. *Aetna Surety*

Co., 338 U.S. 366, 373); "that the government might not be harassed by multiplying the number of persons with whom it had to deal, and might always know with whom it was dealing until the contract was completed and a settlement made" (*Hobbs* v. *McLean*, 117 U.S. 567, 576; cf. *Goodman* v. *Niblack*, 102 U.S. 556, 560); "to protect the Government from traffic in claims against it" (*Sherwood* v. *United States*, 112 F. 587, 592 (C.A. 2), reversed on other grounds, 312 U.S. 584).

In the instant case, the Boshamers never asserted any claim against the United States and in their answer stated they were without knowledge or information as to any damages done the property (R. 23). And respondent Samuel M. Shannon testified on cross-examination that he understood he was "buying a claim against the Government" (R. 13). Clearly, there has been traffic in a claim against the Government and, in fact, it is evident that the assignors would never have asserted the claim. The other purposes stated above are likewise defeated since an investigation of the alleged assignment has been made necessary, the Government has not been able to deal with only the original claimant, and the number of persons with whom it must deal has been multiplied.[5] As Judge Soper pertinently said in his dissent (R. 48):

> The unescapable and controlling fact is that the suits are based on assignments and if it is

[5] In the case of partial assignments, such problems obviously become more complicated.

adjudged that they are tenable, the United States will be required to inquire into the relationship and transactions between the parties, and the very purpose of the Act will be defeated.

III

The Prohibition of the Anti-Assignment Statute May Not Be Avoided on Equitable Principles

The majority opinion below asserted (R. 45) that "No precedent is created which might lead to the evils that the statute was designed to prevent, for the relief is granted in the exercise of the equitable powers of the court which may not be availed of except in circumstances of hardship such as are here presented." But, as we have already noted (*supra*, pp. 12-13), the application of the Act is the same whether the claim is asserted to administrative officers or to a court having equity powers. The statute does not empower the courts to give relief from its requirements. See *United States* v. *Gillis*, 95 U.S. 407, 413-414; *Spofford* v. *Kirk*, 97 U.S. 484, 488-489; *National Bank of Commerce* v. *Downie*, 218 U.S. 345, 353-354; *Hitchcock* v. *United States*, 27 C. Cls. 185, 206-208, affirmed *sub nom. Prairie State Bank* v. *United States*, 164 U.S. 227. For example, with reference to the Anti-Assignment Act, this Court stated in the *Gillis* case (95 U.S. at pp. 413-414) "* * * the statute strikes down and denies any effect to powers of attorney, orders, transfers, and assignments *which before*

were good in equity, and which a debtor was bound to regard when brought to his notice" (emphasis added). And, the Court used the following language in *Spofford* v. *Kirk, supra,* and repeated it by quoting from that case in *National Bank of Commerce* v. *Downie, supra* (97 U.S. at pp. 488-489, 218 U.S. at p. 353):

> It would seem to be impossible to use language more comprehensive than this. *It embraces alike legal and equitable assignments.* It includes powers of attorney, orders, and other authorities for receiving payment of any such claim, or any part or share thereof. It strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the government from creating an interest in the claim in any other than himself. (Emphasis added.)

As was aptly stated in *Mattox* v. *Hightshue,* 39 Ind. 95, 105, and applied to the Anti-Assignment Act in *Hitchcock* v. *United States,* 27 C. Cls. 185, 206, affirmed *sub nom. Prairie State Bank* v. *United States,* 164 U. S. 227: "An equity cannot grow out of an illegal and void transaction."

It is said that the equitable relief here granted on the ground of mistake is primarily between the private parties (R. 44). It is true that it has been held that, since the Anti-Assignment statute is for the protection of the Government, it will not be applied so as to produce inequitable results between assignor and assignee. *McKenzie* v. *Irving Trust*

Co., 323 U.S. 365; *Martin* v. *National Surety Co.*, 300 U. S. 588; *Lay* v. *Lay*, 248 U.S. 24; *McGowan* v. *Parish*, 237 U.S. 285. But those decisions presented situations where the Government was not concerned with the result, such as cases where the claim had already been paid or allowed. In those cases, equitable principles were invoked in determining which person should receive money which the Government had paid. But here the equitable "relief," because of "mistake", consists of permitting a suit against the United States by the assignee of an unliquidated claim. This so-called "equitable relief" swallows up the whole of the Anti-Assignment Act, to the clear detriment of the Government.

Moreover, "Any ordinarily prudent person in purchasing property takes into consideration its condition at the time of the purchase. It is reasonable to assume that plaintiff did so." *Smith* v. *United States*, 96 C. Cls. 326, 342. In the instant case, it affirmatively appears that respondents took into consideration the condition of the property at the time of the purchase. On cross-examination, in response to the question "At the time you acquired the place, you knew all of these damages had been done," Mr. Shannon answered "Sure" (R. 12); as the dissenting judge observed (R. 49), "It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless." And while the Boshamers were agreeable to recovery by the Shannons from the United States, they denied

"that they are personally liable or responsible to plaintiffs or anyone else for any act of damage" (R. 24). As the dissenting opinion points out in detail (R. 49-50), the officers of the United States had no part whatever in the transaction by which the claims against the United States were assigned, and were in no way to blame for any mistaken notion of the law which the parties may have entertained at that time. Thus, even if the statute did not preclude the granting of equitable relief, there is, in fact, no basis therefor here. The conclusion is, we submit, inescapable that contrary to the terms and purposes of the Act, respondents have been permitted to buy and recover upon a claim against the United States which their vendors were unwilling to urge.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below is erroneous and should be reversed.

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REPLY BRIEF FOR THE UNITED STATES

I

RESPONDENTS' ARGUMENTS RELATING TO THE LAND LEASED TO THE UNITED STATES ARE IRRELEVANT TO THIS CASE

In the lower courts, two cases were brought by respondents, one under the Tort Claims Act and the second under the Tucker Act. The Tucker Act claim related to land which had been leased to the United States. The Tort Claims Act claim embraced land which had been excepted from the lease. Our petition for writ of certiorari pointed

out (p. 1) that while it was believed that the judgments in both cases were erroneous, certiorari was sought to review only the judgment in the Tort Claims Act case. This was done in order to simplify the matter and to present more clearly the important issue whether the command of the Anti-Assignment Act can be avoided simply by joining assignors as parties defendant or unwilling plaintiffs. All of the arguments now advanced by respondents ignore the difference between the two cases, and are based upon conclusions drawn from transactions relating to the portion of the land the United States had leased. (We shall show *infra* that these conclusions are wholly lacking in factual support.) Indeed, respondents take the position (Br. 18–19) that there is no difference between the two cases. We submit that as to the claim asserted under the Tort Claims Act to recover damages for injury to land and buildings which had never been leased to the Government, respondents' arguments are irrelevant and present no ground for entry of judgment for the assignees of that claim.

II

THE PROHIBITION OF THE ANTI-ASSIGNMENT ACT MAY NOT BE DISREGARDED ON EQUITABLE PRINCIPLES

All of respondents' contentions relate to alleged equities and it is argued (Point I, Br. 7) that

"the operation of the Anti-Assignment Act, 31 U. S. C. 203, should not be invoked in this case." But, as we have shown in our main brief, pages 15–18, the statute does not empower the courts to relieve an assignee from its prohibition because of circumstances existing in a particular case. In this connection, we pointed out (Br. 12–13, 15) that the Act applies whenever and wherever a claim is presented and it cannot have a different application before the courts than it has before administrative tribunals. Respondents deny that any such result would follow affirmance of the decision below on the ground that the fiscal and accounting officers must follow the decisions of the courts (Br. 19–20). This is no answer to our position. The basis for the refusal of the court below to apply the Act is not any rule of law but simply that court's view of the circumstances of the particular case. This clearly appears from the concluding sentence of the majority opinion below that (R. 45) "No precedent is created which might lead to the evils that the statute was designed to prevent, for the relief is granted in the exercise of the equitable powers of the court which may not be availed of except in circumstances of hardship such as are here presented."

III

RESPONDENT'S ASSERTIONS AS TO THE ALLEGED INEQUITABLE CONDUCT OF GOVERNMENT AGENTS AND ALLEGED HARDSHIP ARE WHOLLY WITHOUT FACTUAL FOUNDATION

Respondents' contentions represent, in more extreme form, the argument as to mistake advanced in the majority opinion below (R. 43–44). There is neither evidence nor findings as to any such mistake since this theory first appeared in the decision below. As the dissenting judge said (R. 48–49) "There was no mention of mistake in the formal pleadings, or in the evidence, or in the judgment of the District Court, or in the briefs in this Court * * *."[1] Moreover, the conclusions of respondents are affirmatively disproved by facts in the record.

A. *The Alleged Inequitable Conduct of Government Agents.*—Respondents say that "agents of the United States, who knew of the assignment rights existing between the Boshamers and the Shannons, and who had obtained a lease of this property in question by promising the Shannons, in writing, that they would be protected in filing and prosecuting these rights, went to the Boshamers without warning, notifying or consulting the Shannons and obtained a release of those

[1] The view of the trial court, that the Anti-Assignment Act did not bar recovery, was established long prior to the trial when the Government's motion to dismiss was overruled.

damage claims from the Boshamers" (Br. 5). Elsewhere they describe the obtaining of the release as "what appears to have been an effort to thwart the Shannons in recovering upon these claims" (Br. 8; see also Br. 12, 14).

This argument ignores the facts and particularly the chronology of events. The attempted assignment was contained in the contract of sale of the property dated April 30, 1946 (R. 32–33). And the property was conveyed by deed on June 3, 1946 (R. 27). Government agents had no connection with this transaction. Thereafter, a tri-party contract was entered into dated June 20, 1946.[2] The contract recited the leasing of the property and the subsequent conveyance. It substituted the Shannons as lessors and it was agreed that rent for the period ending June 30, 1946, should be paid to the Boshamers. It was then provided (par. 3, R. 14–15):

> 3. First party [the Boshamers] herein agrees and hereby releases and discharges the Government, its officers and agents, of and from all actions, liabilities and claims against the Government, its officers and agents, for damages to or waste of the lands covered by said lease, or any part thereof, occasioned by the occupancy thereof by the Government prior to the convey-

[2] This contract was probably actually executed by all parties in early 1947 (R. 50, 34).

ance thereof by First Party to Second Party [the Shannons], to wit: June 3, 1946.

Finally, the agreement provided that the Shannons accepted the terms of the lease and it was signed by the Boshamers, the Shannons and the United States. No mention is made of any assignment of claims against the United States. Appended to the agreement was a separate statement signed only by the Shannons as follows (R. 15–16):

> The Second Parties, in executing this Supplemental Agreement, hereby remise, release and forever discharge the Government, its officers, agents, and employees of and from any and all manner of actions, liability, and claims (except for unpaid rent due for the period ending April 22, 1947) against the Government, its officers and agents, which the Lessor has or ever will have for the restoration of said premises, or by reason of any other matter, cause or thing whatsoever particularly arising out of said lease and the occupancy by the Government of the aforesaid premises, however, this waiver and release shall not be construed to apply to any legal claim for damages which the Second Parties may have by reason of damages, if any, to timber, terraces, fencing, and to land caused by army vehicles, tank implacements, and digging of fox holes, resulting in destruction of terraces and erosion during Government occupancy, and Second

> Parties expressly reserve the right to file and prosecute their claim for such damages so excepted from this release.[3]

There is nothing in the language of this reservation from which may be implied a promise on the part of government agents to recognize an assignment of claims against the United States, as asserted by respondents (e. g., Br. 4, 5, 6). Indeed, this provision contains no promise by the Government of any kind bu merely purports to reserve "any legal claim for legal damages" which the Shannons might have.

Referring to a formal release executed by the Boshamers under date of May 1, 1947, respondents charge government agents with unconscionable conduct in obtaining such release without the knowledge of the Shannons after execution of the supplemental agreement (Br. 2, 4, 5, 8, 10, 12, 14–15, 20). However, paragraph 3 of the supplemental agreement quoted above (pp. 5–6), released all claims of the Boshamers prior to the conveyance to the Shannons on June 3, 1946, and the damage here was done in January and February, 1945 (R. 27). The later release simply embodied paragraph 3 in more appropriate form. The release from the Boshamers was thus embodied in the agreement signed by the Shannons and there

[3] It should be noted that the damages awarded in the instant case, which are solely on account of injury to the two tenant houses and the barn (Fdg. 3, R. 27) would not seem to be embraced in this reservation.

is no warrant for the charge that it was obtained without their knowledge.

B. *Alleged Hardship.*—The Government had no part in the transaction by which the land was sold and the claim for damages was purportedly assigned to the Shannons. See the analysis of the facts by the dissenting judge below (R. 49–50). Respondents do not deny that, as pointed out by the dissenting judge, "It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless" (R. 49). They simply say that this has no bearing upon the legal principles of this case (Br. 21). However, it is certainly material to the claims of hardship. It is evident that the Boshamers did not consider that any substantial portion of the consideration represented the claims assigned for, as they later stated in explaining why they refused to join as plaintiffs "they are without any knowledge or information as to any damages done to the said property" (R. 23). The Boshamers further statement in their answer denying that they are personally liable or responsible to the Shannons or anyone else for any act of damage (R. 24) is additional indication that the assignment of the claims was not a material factor in the sale.

Finally, respondents attempt to spell out some kind of hardship upon them resulting from the tri-party agreement. The sale and the purported assignment had been executed prior to that agreement. Respondents' notion that the tri-party

agreement represents a voluntary lease by them to the United States (Br. 7–8, 9, 10, 11, 12) is obviously fallacious. The land was already leased to the United States, the sale was necessarily subject to the lease and the agreement represented, not the making of a lease, but the substitution of the Shannons as lessors.[1] There is thus no basis for the assertion (Br. 9) "The Government has profited in its dealings with the Shannons by receiving a lease to the land in question." The Government already had the lease. And, in fact, the agreement was executed at a time when the Government was relinquishing possession (see R. 50, 34).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below is erroneous and should be reversed.

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NOVEMBER 1951.

[1] The contract of sale expressly stated (R. 32): "It is further agreed that the purchasers are purchasing this property subject to a certain lease over the property now held by the United States Government."

U. S. GOVERNMENT PRINTING OFFICE: 1951

Supreme Court of the United States

No. 47

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER,

versus

SAMUEL M. SHANNON, PATTI A. SHANNON and W. L. SHANNON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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OPINIONS BELOW

The findings of fact and conclusions of law of the District Court are in the Transcript at pages 26-27. The opinion of the Court of Appeals for the Fourth Circuit is in 186 F. (2d) 430.

JURISDICTION

The judgment of the Court of Appeals was entered January 3, 1951. (R. 54.) By order of the Chief Justice dated March 21, 1951, the time for filing a petition for Writ of Certiorari was extended to May 7, 1951. (R. 56.) The petition for Writ of Certiorari was filed May 3, 1951, and granted October 8, 1951. Jurisdiction of this Court rests on 28 U. S. C. 1254.

QUESTIONS PRESENTED

1. Does the Anti-Assignment Act, 31 U. S. C. 203, bar a claimant from recovering damages from the United States when the rights of the claimant, who is an assignee of a claim, have been materially impaired by the willful, unconscionable acts of an agent of the United States, who, with knowledge of the assignment, sought to defeat it by wrongful means?

2. Does the Anti-Assignment Act, 31 U. S. C. 203, bar a claimant, who is an assignee of a claim against the United States, from recovering damages from the United States when the claim was acquired by the claimant through a mistake of law and as an incidental part of a bona fide contract to purchase realty, leased at that time by the United States, and was not acquired for the primary purpose of prosecuting the claim itself?

3. Does the Anti-Assignment Act, 31 U. S. C. 203, bar a claimant who is an assignee of a claim against the United States from recovering damages from the United States, when the claim was acquired as an incident to a bona fide transfer of a piece of realty, and when in the suit to enforce the claim all parties were before the Court and the Government was fully protected?

STATUTE INVOLVED

Sec. 3477, Revised Statutes, as amended, 31 U. S. C. Sec. 203,

> "All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

STATEMENT

On January 1, 1943, Mrs. Kathleen P. Boshamer and others (hereafter referred to as the Boshamers), leased to the United States a tract of land containing 232 1/4 acres, excepting therefrom two tenant houses and the immediate one acre surrounding each. There was also a barn on the two acres that was not mentioned in the lease. On April 30, 1946, by Contract of Sale, the Boshamers agreed to sell to Samuel M. Shannon and W. L. Shannon the land covered by the lease and the two acres, two tenant houses and barn. Incidental to the sale of the land, the Boshamers transferred to Samuel M. Shannon and W. L. Shannon any claim, reparation or cause of action against the United States for damage to the property during the term of the Boshamers' lease. Subsequently, Samuel M. Shannon transferred to Patti A. Shannon all of his rights under this contract of sale. On June 3, 1946, the Boshamers conveyed the property, the subject of this action, to Patti A. Shannon and W. L. Shannon. The two tenant houses and the barn were almost totally destroyed by United States soldiers in January and February, 1945. The amount of the damage and

the amount of the judgment was $975.00. (R. 26-27, 32-33.) On June 20, 1946, the Boshamers, the Shannons and the United States entered into a supplemental agreement by the terms of which the Shannons became the lessors of this property to the United States. (R. 13-16.) In this supplemental agreement the United States tried to get the Shannons to surrender their claims for damages to the land but the Shannons refused to do so and demanded, instead, an addition to the contract whereby they were given the right to file and prosecute their claims for damages. Some time after the United States Agents had signed this supplemental agreement with both the Boshamers and the Shannons, on May 1, 1947, these agents went to the Boshamers alone, without consulting, notifying or saying anything to the Shannons and procured the Boshamers' signatures on what purports to be an absolute release from the claims of the Boshamers arising out of the occupation of the land by the United States in return for "One dollar and other valuable considerations." (R. 16-17.) Then when the Shannons brought suit on their claims in the District Court the United States set up as a defense to the suit that the former owners had released the United States from any claims for damages to their property. (R. 25.) The Shannons brought suit against the United States in the District Court for the Eastern District of South Carolina. In the Shannons' Complaint they allege that the Boshamers are joined as unwilling parties plaintiff because the Boshamers have a cause of action against the United States which they have assigned to the Shannons for a valuable consideration, and because the Shannons are equitably entitled to any judgment arising out of this cause of action. (R. 20.) In their answer, the Boshamers admitted that the Shannons were entitled to any judgment that might be recovered against the United States for damage to the land. (R. 22-24.) At the trial of

the case none of the parties known as the Boshamers, of whom there were six, appeared in person or by attorney and none testified.

SUMMARY OF ARGUMENT

I

The assignment of the claims against the United States, from the Boshamers to the Shannons was a perfectly valid and legal assignment as between these parties because the Anti-Assignment Act does not affect the rights of these parties as between themselves. Under normal circumstances, if there had been no outside interference in this case, the Boshamers themselves could have prosecuted the claims for damages to the land against the United States and having recovered these damages then the Shannons would have the right to collect the damages from the Boshamers under their assignment. However, agents of the United States, who knew of the assignment rights existing between the Boshamers and the Shannons, and who had obtained a lease of this property in question by promising the Shannons, in writing, that they would be protected in filing and prosecuting these rights, went to the Boshamers without warning, notifying or consulting the Shannons, and obtained a release to these damage claims from the Boshamers. Under these circumstances the claims of the Shannons against the United States have been materially impaired by the willful, wanton acts of the United States agents and should not be barred by invoking the Anti-Assignment Act. That Act was never intended to cover a situation of this kind where applying the Act would condone questionable methods of the United State's agents and would cause the United States to profit by such unconscionable methods at the expense of its citizens.

II

When the Boshamers and the Shannons entered into the Contract for the sale of land and included in that contract an assignment of the claims that the Boshamers had against the United States, all of the parties thought that such an assignment was valid. The assignment of these claims was not the primary purpose of this contract but was only incidental to the contract, the purpose of which was to agree to convey 232 1/4 acres of land. (R. 32-33.) The Agents of the United States thought the assignment valid and enforceable and the United States acquired the lease of this land from the Shannons by its agents' promise to honor the assignment. If this assignment is such that it comes within the purview of the Anti-Assignment Act, the operation of that Statute should be prevented by this Court because the Shannons, Boshamers and the United States agents were all parties to a mistaken belief that the assignment was valid and the United States has already profited by this mistake and should not be allowed to profit further at the expense of its citizens.

III

The Anti-Assignment Act, having been passed for the protection of the United States, was never intended to bar a claim such as the Shannons are now presenting to this Court. If the Act bars this claim then it has become a sword to strike down valid claims of innocent citizens and a snare to trap any person who is not fully aware of all of its peculiar provisions. The Shannons' claim was acquired as an incident to a bona fide transfer of land at that time under lease to the United States. In such a transfer it is only proper and customary that the vendor should sell any claims that he might have for damages under any current lease over the land. There was no intent on the part of

either vendor or vendee to traffic in claims against the United States. When the Shannons undertook to enforce their claims they brought all of the interested parties before the judicial forum. There was never the remotest intent or possibility of any injustice or wrong being done to the United States. Under such circumstances the Anti-Assignment Act should not be a bar to a recovery by the Shannons.

ARGUMENT.

I

The operation of the Anti-Assignment Act, 31 U. S. C. 203, should not be invoked in this case.

The assignment of these claims from the Boshamers to the Shannons was valid as between those parties. If the Boshamers had sued the United States in their own right and had recovered the amount of the damages to the land, then the Shannons could have used legal process to enforce their rights to these funds, under their assignment. *McKenzie v. Irving Trust Co.*, 323 U. S. 365, 369, 89 L. Ed. 309, 12 A. L. R. (2d) 468; *Martin v. National Surety Co.*, 300 U. S. 588, 594-598, 81 L. Ed. 822; *Lay v. Lay*, 248 U. S. 24, 63 L. Ed. 103; *McGowan v. Parish*, 237 U. S. 285, 59 L. Ed. 955. At the time that the assignment was made the land was under lease to the United States. (R. 32, 33.) The agents of the United States knew that the land had been sold to the Shannons and that the Boshamers had assigned their rights to damages for injuries to the land by the United States to the Shannons. (R. 13-16, 34-36.) Certainly, these agents knew, regardless of whether or not the Shannons could recover against the United States on the basis of this assignment, that the Boshamers could sue the United States and recover these damages. By virtue of a promise to permit the Shannons to file and prosecute their claims against the

United States the agents of the United States obtained from the Shannons a lease to the property that the Shannons had bought from the Boshamers. (R. 13-16.) Then, in what appears to have been an effort to thwart the Shannons in recovering upon their claims, the agents of the United States went to the Boshamers, after the lease had been terminated and the property had been returned to the Shannons and without notice to the Shannons, had the Boshamers sign a release, releasing the United States from all actions, liability and claims arising out of the occupation of the property by the United States. (R. 16-17.) The consideration for this release was "one dollar and other valuable considerations" paid to six former lessors. This is not a pretty picture. Here, the United States had obtained the Shannons' signatures on a legal document by promising to permit the Shannons to file and prosecute claims based upon an assignment of claims from the Boshamers to the Shannons. Then these agents went knowingly and willfully behind the Shannons' backs and obtained a release to these claims from the Boshamers. These agents were men of superior intelligence. The Shannons are not, as can be seen from their testimony in the case. (R. 12-13, 34-36.) In fact, Samuel M. Shannon is an uneducated farmer. Patti A. Shannon is his wife. W. L. Shannon is his son, who earns his livelihood by working for a railroad on a freight train. The agents knew that the only hope that the Shannons had to recover on their assignment was through the Boshamers. Therefore, in a conscious effort to foil the Shannons in their rights the agents of the United States obtained this release from the Boshamers. Now, if the Shannons are denied the right to recover on their assigned claims in this case, because of the Anti-Assignment Act, they will be unable ever to recover upon these claims because the agents of the United States have precluded the Boshamers from

bringing suit for the damages covered by the assignment by obtaining the release from them. That would certainly be a most unjust conclusion to this case.

It is hard to conceive of any reason why the Anti-Assignment Act should be applied in this case to bar a recovery by the Shannons. The cases show that the statute must be interpreted in the light of its purpose, to give protection to the Government. *Martin v. National Surety Co.*, 300 U. S. 588, 596-597. What protection does the Government need here that it does not have? What harm can come to the Government by permitting a recovery to the Shannons in this case? The Government has profited in its dealings with the Shannons by receiving a lease to the land in question. Had it not been for the unconscionable acts of the agents of the Government the Boshamers could have recovered upon the claims for damages against the United States. In turn, the Shannons could have recovered the proceeds from the Boshamers. What result, injurious to the United States can come about by permitting the Shannons to recover through the Boshamers in one suit when all of the parties are before the Court? We submit that there are none. In this case, should this Court decree that the Anti-Assignment Act bars the Shannons from a recovery there will be no way for anyone to recover on these claims against the United States and the United States would have profited by the wrongful acts of its agents. In the event that this Court decrees that the decision of the Court of Appeals should be affirmed and that the Anti-Assignment Act is not a bar to a recovery by the Shannons, then they will recover no more than they are legally and equitably entitled to.

In *United States v. Aetna Casualty and Surety Company*, 338 U. S. 366, 12 A. L. R. (2d) 444, this Honorable Court decided that where an agent of the United States, through his negligent acts, places a corporation in a posi-

tion where it must pay a claim, under a contract to indemnify, to a person injured by the agents negligent acts and the person injured could have recovered against the United States under the Federal Tort Claims Act (28 U. S. C. 1346 (b), 2674), then the Corporation can sue the United States in its own name despite the Anti-Assignment Act (31 U. S. C. 203). The case now before this Honorable Court recommends itself to the Court with equal strength. Here the Shannons had a claim against the United States, from which they could have realized damages by forcing the Boshamers to bring suit against the United States, under the Federal Tort Claims Act. Agents of the United States, with knowledge of the Shannons claims, after agreeing that the Shannons would be allowed to file and prosecute these claims, have gone to the Boshamers and through their willful acts have acquired a release that forever prevents the Shannons from recovering upon their claims against the United States, even in a suit by the Boshamers alone. Certainly, these agents of the United States have created a situation through their willful acts in which the Shannons or anyone else in a like position should be allowed to recover against the United States under the Federal Tort Claims Act, without having their cause of action barred by the Anti-Assignment Act.

In the course of this appeal someone will undoubtedly suggest that the promise by the agents of the United States to the Shannons to permit them to prosecute their assigned claims is not enforceable in a Court. (R. 15-16.) Whether or not such claims were enforceable because of that written agreement is beside the point. The inevitable fact remains that because of this promise the United States acquired certain legal rights and the agents of the United States recognized the fact that the Shannons possessed certain claims against the United States that they had ac-

quired by assignment from the Boshamers. These agents knew that these assigned claims could be enforced by the Shannons through the Boshamers. Yet, despite this knowledge, and in the face of their equitable duty to the Shannons these agents of the United States willfully procured a release to these claims from the Boshamers for an inadequate consideration.

We submit, that where a claimant has a claim for damages against the United States that the claimant has acquired by assignment from a third party and agents of the United States know of this claim and promise the claimant that he can prosecute the claim in return for legal rights received from the claimant, and where the claimant can recover upon his assigned claims only through his assignor, and the agents of the United States willfully take a release from this assignor for an inadequate consideration and without notice to the claimant, then that claimant can recover upon his claims in a Court in a suit against the United States by joining the assignor as an unfriendly party-plaintiff in the suit.

II

The Anti-Assignment Act, 31 U. S. C. 203, does not bar a claimant from recovering upon an assigned claim against the United States, where the claim was acquired through a mistake of law and as an incidental part of a bona fide contract to purchase realty.

When the Boshamers and the Shannons entered into the contract for the sale of this property and included in the contract of sale, as an incident of that contract, the assignment of the claims that the Boshamers had against the United States for damage to the land, both the Boshamers and the Shannons were under the mistaken belief that the Shannons could then prosecute these claims against the United States. (R. 32-33, 43.) When the United States en-

tered into the three-cornered agreement with the Boshamers and the Shannons, whereby the Shannons became lessors of the United States and the United States agreed that the Shannons could prosecute their claims against the United States, both the Boshamers and the Shannons thought that the Shannons were protected in their right to these claims against the Government. (R. 13-16.) The only party to that agreement who could have known otherwise was the Government through its agents. The U ..ted States thereby acquired legal rights at the expense of the Shannons through their ignorance. It would be most unfair and inequitable now for this Honorable Court to invoke the Anti-Assignment Act to bar the Shannons from recovering upon these claims which the agents of the United States promised them they could file and prosecute in return for their signatures upon the lease of land to the United States. If the agents of the United States knew that they were giving the Shannons a promise that could not be enforced then there is absolutely no question that this Court should invoke its equitable powers to prevent the Shannons from being deprived of that which is rightfully theirs by the operation of the Anti-Assignment Act. Every indication in this case points to the fact that the Agents of the United States did not believe that the Shannons could enforce their claims against the Government, at the very time that this tripartite agreement was entered into. Subsequently, these agents went to the Boshamers and persuaded them to sign a release to the claims that they had assigned to the Shannons. (R. 16, 17.) This release was obtained without notice of any kind to the Shannons. It was not until after this release had been obtained from the Boshamers that the United States first contended that the Shannons' claims were unenforceable because of the Anti-Assignment Act. (R. 34-36, 40.) In view of the fact that after the Government obtained the release

from the Boshamers, its agents then invoked the operation of the Anti-Assignment Act against the Shannons, it can hardly be contended that these agents did not know of the effect of that statute at the time that they procured this release. The Boshamers were willing to sign the release for little or no consideration because they had transferred these claims to the Shannons. They had no way of knowing that this release might have a material effect upon the Shannons' recovery of damages for the claims that the Boshamers had assigned to them. So here we have a mutual mistake of law in the minds of the Boshamers and the Shannons as to the effect of the assignment of the claims against the United States in the Contract of Sale signed by the Boshamers and Shannons. (R. 32-33.) We have, at least, a mutual mistake of law between the agents of the United States and the Shannons in the signing of the three-party agreement, as to the effect of the agreement by the agents that the Shannons would be allowed to prosecute these claims against the Government. (R. 13-16.) It is highly probable that the agents of the United States knew when they signed this agreement with the Shannons that the United States would invoke the Anti-Assignment Act to prevent a recovery on the part of the Shannons. It is certain that the agents of the United States knew what they were doing when they took the release to these claims from the Boshamers (R. 16, 17), and knew that they would make a conscious effort to combine this release from the Boshamers with the Anti-Assignment Act to defeat the claims of the Shannons. In view of these facts we believe that the Court of Appeals was correct in affirming the judgment of the District Court and this Court should not reverse the decision of the Court of Appeals. In Pomeroy's Equity Jurisprudence, Fifth Ed., Sec. 847, we find the following stated:

"Whatever may be the effect of a mistake pure and simple, there is no doubt that equitable relief, affirmative or defensive, will be granted when the ignorance or misapprehension of a party concerning the legal effect of a transaction in which he engages, or concerning his own legal rights which are to be affected, is induced, procured, aided, or accompanied by inequitable conduct of the other parties. It is not necessary that such inequitable conduct should be intentionally misleading, much less that it should be actual fraud; it is enough that the misconception of the law was the result of, or even aided or accompanied by, incorrect, or misleading statements, or acts of the other party."

Certainly, it is proper for the Court in this case to use its strong equitable arm to aid the Shannons and to prevent the Anti-Assignment Act from taking that which justly belongs to them. In signing the tripartite agreement (R. 13-16), the Government agents knew or should have known that the United Sates would oppose the Shannon claims by pleading the Anti-Assignment Act. Yet, they told no one and said nothing. Instead they continued to deal with the Shannons as if they would live up to their agreement. (R. 34-36.) When the Government agents took the release from the Boshamers (R. 16, 17), they knew that the Boshamers did not understand that this would affect the Shannons in their claims. Else, the Boshamers would not have signed the release for such a miserable consideration. We would like to call to the Court's attention that the United States' Attorneys considered the release from the Boshamers a release to the claims relied upon by the Shannons in this suit under the Federal Tort Claims Act and specifically pleaded this release as a defense. (R. 25.) This assignment of these claims was valid as between the Shannons and the Boshamers. The Boshamers could recover upon their claims unless prevented from doing so by the release that the Government agents procured from them, without notifying the

Shannons. Any sum of money recovered from the United States by the Boshamers would be impressed with a trust in favor of the Shannons. *Martin v. National Surety Company*, 300 U. S. 588, 597. This is a case in which this Honorable Court should use its equity powers to relieve the respondents of their mistakes of law and to protect the Respondents against over-reaching on the part of governmental agents and to excuse the respondent's claims from the operation of this Anti-Assignment Act. The fact that this Court has such power cannot be denied. See *Commercial Cas. Ins. Co. v. Lawhead*, 4 Cir. 62 F. (2d) 928; *Clarksburg Trust Co. v. Commercial Cas. Ins. Co.*, 4 Cir. 40 F. (2d) 626; *Philippine Sugar Estates Development Co. v. Philippine Islands*, 247 U. S. 385; *Griswold v. Hazard*, 141 U. S. 260; *Snell v. Ins. Co.*, 98 U. S. 85; Pomeroy's Equity Jurisprudence, 4th Ed. Vol. 2, p. 1711 *et seq.*

We submit that this relief should be granted the Shannons as a matter of equity because of the mistake involved, the questionable behavior of the Agents of the Government and the hardship that would result to the Shannons otherwise.

In the case of *United States v. Aetna Casualty and Surety Co.*, 338 U. S. 336, this Court held that where an insurance company was caused to pay a claim under one of its policies because of the negligent acts of an agent of the United States and the claimant to whom the payment was made would have had a right to sue the United States under the Federal Tort Claims Act (28 U. S. C., Sec. 1346 (b), 2674) that then the insurance company becomes subrogated to the rights of the claimant-payee as a matter of law and the insurance company can then sue the United States on the claim of the claimant-payee in the name of the insurance company, without joining the claimant-payee as a party to the suit despite the Anti-Assignment Act. We

feel that the reasoning behind that case can be applied to the facts in this case now before the Court. Here, the Shannons and Boshamers entered into a *bona fide* contract for the sale of land. There was no intent on the part of either to traffic in claims against the United States. At the time of their contract the land happened to be leased to the United States by the Boshamers. As lessor they had acquired certain claims against the United States because of damage done to the land while using it. What would be more natural than for the Boshamers to transfer these claims to the Shannons when the Shannons purchased the land. The Shannons were the parties who would deal with the United States hereafter. It was entirely possible that at the end of the lease the Shannons would have some claims to settle with the United States. We believe that the theory of *United States v. Aetna Casualty and Surety Co.* should be extended to cover a case of this kind. We feel that where assignments of claims against the United States, which are incidents of a pre-existing *bona fide* status such as a landlord and tenant relationship, are made for the purpose of effecting a *bona fide* transfer of realty, that such claims should not come within the purview of the Anti-Assignment Act.

Those who are opposed to this Court allowing a recovery in this case on the part of the Shannons state that there are four reasons why the Congress of the United States passed the Anti-Assignment Act, (1) to prevent influential persons from buying claims against the Government and urging them improperly upon the officers of the Government, (2) to prevent multiple payment of claims, (3) to make unnecessary the investigation of alleged assignments (4) to enable the Government to deal only with the claimant. (R. 45; Appellant's Brief 13.) If the claims of the Shannons are allowed in this case it will not violate any

of these principles and it will not lay the United States open to future losses by violation of the principles. The Shannons did not seek to buy claims and then wrongwully impose them upon the Government. These claims came to the Shannons in an absolutely legitimate fashion. In cases of this kind there would never be any danger of a multiple payment of claims and the Government would never have to deal with anyone but the claimant because the claims would always be verified by a contract of sale and a duly recorded deed. So far as investigations are concerned, there would be a minimum of those because of the nature of the documents that would be available to prove the transfer of the claims. We must bear in mind, too, that since the passage of this Act until the present day the investigative powers of the United States Government have grown in direct proportion to the size of the country and one of the jobs that it does best is to investigate any and everything.

III

The Anti-Assignment Act, 31 U. S. C. 203, should not bar a recovery by an assignee who acquired his claim as an incident to a bona fide transfer of realty and when all of the interested parties are before the Court and the Government is fully protected.

The assignment from the Boshamers to the Shannons was based upon a valuable consideration and was enforceable as between the parties to it (R. 32-33.) A cancellation of this assignment would merely restore the original claims to the Boshamers. Williston, Contracts, Sec. 1867 A. A recovery upon these claims by the Boshamers would be impressed with a trust in favor of the Shannons and would inure to their benefit. *Martin v. National Surety Company*, 300 U. S. 588, 597. Where, as in this case, all of the parties are before the Court, including the United States, why

should the Shannons be denied a recovery? What will come from a denial of a recovery but injustice to the Shannons? Those who oppose a recovery on the part of the Shannons in this case case say that this is a circumvention of the Anti-Assignment Act (R. 45, 49). We do not think that this necessarily follows such a decision. The Court is simply doing in a direct manner what could be done in an indirect manner. In *United States v. Aetna Casualty and Surety Company*, 338 U. S. 336, this Court stated that it was not necessary for a subrogee by operation of law to sue the United States jointly with his subrogor, a principle for which the attorneys for the United States contended strongly. This Court said that this procedure was not absolutely necessary but did not forbid that this be done. It is apparent to us that it is a correct practice and that the decision of the Court of Appeals should be affirmed.

Originally this Case had a companion case, No. 6128 in the Court of Appeals. That case was brought for damage done to land owned by the Boshamers and sold to the Shannons, which was under lease to the United States. That case was brought pursuant to the Tucker Act, 28 U. S. C. A. Section 41 (20), for damages done to the land by the United States while the land was leased to the United States and owned by the Boshamers. The land was sold by the Boshamers to the Shannons by the same contract of sale and deed that we have been here discussing and the Boshamers assigned to the Shannons their rights to these damages. (R. 32-33.) The United States, at first, applied for a Writ of Certiorari in both cases, but subsequently in its Petition for Writ of Certiorari (pg. 1), and its brief (pg. 1), the United States' Atorneys abandoned the petition for Certiorari in Case No. 6128, saying that this would simplify the issues. In what respect the issues are thereby simplified it is difficult for us to see. It appears to us that

if the decision of the Court of Appeals in one of these cases is so correct that it need not be appealed, then it follows directly that the decision in this case must also be correct. These two cases arise out of the same facts and are supported by the legal reasoning. If it was proper to ask for Certiorari in one case, then it was proper to ask for Certiorari in the other case. If the decision of the Court of Appeals was correct in one case then it was correct in the other case and that decision should be affirmed.

The United States attorneys question the correctness of the decision of the District Court, in ruling that the judgment would be granted in favor of the Boshamers and then the Shannons would be allowed to recover from them, and then in going ahead and granting judgment for the Shannons (R. 26, 27, Appellant's Brief, pg. 5). Of course, after the District Court explained the basis of its decision, it was not necessary for the Court to spell out that judgment in elementary terms. The rationale supporting the Court's ruling was obvious and the manner in which judgment in favor of the Shannons was rendered was perfectly clear.

In the Brief for the United States, pgs. 12, 13, the attorneys for the United States, relying upon *United States v. Gillis*, 95 U. S. 407, a decision sharply limited in its holding since its rendition, argue that if this Court affirms the decision of the Court of Appeals then there will be a category of claims against the United States that will be denied by the fiscal and accounting officers but honored by the Courts. That places the judicial horse somewhat behind the administrative car. If the Courts direct that claims of this nature shall be honored, then they shall be honored by all departments of our government. The fiscal and accounting officers must follow the directives of our Courts. Justice is not coined in our mints. No administrative or procedural difficulties will arise from an affirmance of the decision of